SUPREME COURT OF THE UNITED STATES.

No. ~~295.~~ ~~193.~~ 56.

ROGER C. WEIGHTMAN, PLFF. IN ER.,

vs.

THE CORPORATION OF WASHINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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United States of America.

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Roger C. Weightman, plaintiff, and the Mayor, Board of Aldermen and Board of Common Council of the city of Washington, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 18th day of October, 1859.

JNO. A. SMITH,
Clk. Cr. Ct., Washington Co., D. C.

District of Columbia, to wit:

The United States of America to the Mayor, Board of Aldermen and Board of Common Council of the city of Washington, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein Roger C. Weightman is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, this 18th day of October, 1859.

JAS. DUNLOP.

Service acknowledged.

W. D. DAVIDGE.

Copy of appeal bond.

Know all men by these presents, that we, Roger C. Weightman, J. M. Carlisle, and Joseph H. Bradley, are held and firmly bound unto the Mayor, Board of Aldermen and Board of Common Council of the city of Washington, in the full and just sum of two hundred dollars, current money, to which payment well and truly to be made and done we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, this twenty-seventh day of March, Anno Domini eighteen hundred and fifty-nine:

Whereas, lately at a circuit court of the District of Columbia, sitting for the county of Washington, at October term, 1858, wherein the said Roger C. Weightman was plaintiff, and the said Mayor, Board of Aldermen and Board of Common Council of the city of Washington were defendants, judgment was rendered against the said plaintiff, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mayor, Board of Aldermen and Board of Common Council, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Roger C. Weightman shall prosecute his writ with effect, and answer all damages and costs, if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

R. C. WEIGHTMAN, [SEAL.]
J. M. CARLISLE, [SEAL.]
JOS. H. BRADLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
F. W. RITTER, as to R. C. Weightman.
W. A. MAURY, as to Carlisle & Bradley.

Approved by the court, Octo. 18, 1859.
True copy. Test: JNO. A. SMITH, *Clk.*

Style of court.

District of Columbia, to wit:

At a circuit court of the District of Columbia, begun and held

in and for the county of Washington, at the city of Washington, on the third Monday of October, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third, were present James Dunlop, chief judge; the Honbl. James S. Morsell and Wm. M. Merrick, asso. judges; William Selden, Esq., marshal; John A. Smith, clerk.

In the records of the proceedings of said court, amongst others are the following, to wit:

Parties. Rule nar.

ROGER C. WEIGHTMAN
vs.
THE MAYOR, BOARD OF ALDERMEN AND BOARD OF COMMON COUNCIL of the city of Washington.

Be it remembered, that heretofore, to wit, at a circuit court begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-seven, the said plaintiff, by Carlisle & Maury, esquires, his attorneys, and the said defendants, by Walter Lenox, Esq., their attorney, appear in open court, and by leave of the court here the said cause is docketed by consent of the said parties, by their attorneys aforesaid; and thereupon, on motion of the said defendants, by their attorney aforesaid, it is ruled by the court here that the said plaintiff declare against the said defendants in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. Whereupon, the said cause was regularly continued until October term, eighteen hundred and fifty-eight, when the said plaintiff, by his attorneys aforesaid, declared against the said defendants in the plea aforesaid, in form following, to wit:

Nar.

District of Columbia, county of Washington, to wit:

The Mayor, Board of Aldermen, and Board of Common Council of the city of Washington, were summoned to answer unto Roger C. Weightman in a plea of trespass on the case, and so forth. And thereupon the said plaintiff, by his attorneys, Carlisle & Maury, complains, for that whereas, at the time of, and for a long time before the bringing of this suit, there was and still is a certain common and public bridge over the Rock creek, in the county aforesaid, and which said bridge leads from K street north, in the city of Washington, to Water street, in Georgetown, in the county aforesaid, which said bridge is used by the good citizens of the United States for crossing and re-crossing on foot, and with their

horses, carriages, carts, and other vehicles the Rock creek aforesaid; and whereas, further, the said defendants have used to keep the said bridge in repair, and of right ought to keep the said bridge in repair for the safe and convenient passage and transit of the said good citizens of the United States; nevertheless the said plaintiff saith, that on the twentieth day of May, A. D. 1854, at the county aforesaid, the said bridge was in a dangerous, unsafe, and ricketty condition, by reason of the default and negligence of the said defendants, and that he, the said plaintiff, was then and there, to wit, on the day and year aforesaid, at the county aforesaid, lawfully passing and crossing over the said bridge in a certain common and ordinary vehicle, and while so passing and crossing over the said bridge, the said bridge, by reason of its said ricketty, unsafe, and insecure condition, and the default and negligence of the said defendants, then and there broke, gave way, and fell in, by reason of which said breaking, giving way, and falling in, the said plaintiff was then and there with great force thrown and precipitated into the said Rock creek, and one of the arms of him the said plaintiff became and was fractured and broken, and the said plaintiff was otherwise greatly bruised, wounded, and injured; and also, by means of the premises, the said plaintiff became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, hitherto, during all which said time, the said plaintiff suffered and underwent great pain, and was hindered and prevented from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted, and lost, and was deprived of divers great gains and profits, which he might and otherwise would have derived and acquired; and thereby also the said plaintiff was forced and obliged to, and did then and there pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of five hundred dollars, in and about endeavoring to be cured of the said fractures, bruises, and injuries so received as aforesaid, whereby the said plaintiff saith he hath sustained damage in the sum of ten thousand dollars, and therefore he brings his suit.

CARLISLE & MAURY,
Attys. for Plff.

Rule plea. Plea of not guilty. Issue joined. Venire facias.

And thereupon, on motion of the said plaintiff, by his attorneys aforesaid, it is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. Whereupon the said defendants, by their attorney aforesaid, defend the wrong and injury, when, and so forth, and say that they are not guilty in manner and form as the aforesaid plaintiff above against them hath declared, and of this,

they put themselves upon the country, and the said plaintiff in like manner and so forth; therefore, let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., who being called, come, to wit:

Jury. Verdict for defendants. Judgment.

1. Geo. D. Livingston; 2. Almon Baldwin; 3. Anthony Addison; 4. Jos. T. Worthington; 5. William Cooper; 6. John E. Neale; 7. John J. Berrett; 8. Jonathan Kirkwood; 9. Caleb Buckingham; 10. Samuel Hanson; 11. Wm. H. Perkins; 12. John Bittenger, who, being duly empannelled and sworn to say the truth of and upon the premises aforesaid, upon their oath do say, that the said defendants are not guilty in manner and form as the aforesaid plaintiff within against them hath complained; therefore, it is considered by the court here, that the said plaintiff take nothing by his writ and declaration aforesaid, but be in mercy, &c., for his false clamor, and that the said defendants go thereof, without day, &c. And it is also considered by the court here, that the said defendants recover against the said plaintiff the sum of twenty-one dollars and ninety-five cents, by the court hereunto them the said defendants, on their assent adjudged, for their costs and charges by them about their defence in this behalf laid out and expended.

Test: JNO. A. SMITH, *Clk.*

Memorandum.

Before the jurors aforesaid retired from the bar of the court here the said plaintiff, by his attorneys aforesaid, filed in court here the following bill of exceptions, to wit:

Plaintiff's bill of exceptions.

ROGER C. WEIGHTMAN
vs.
THE CORPO. OF WASHINGTON. } Plffs. bill of exceptions.

On the trial of this cause the plaintiff, to maintain the issue on his part joined, read from the charter of the city of Washington (it being agreed that either party might read therefrom as evidence such parts as he might deem pertinent to the issues) the 13 § of the charter of 1820, as follows:

"Sec. 13. And be it further enacted, That the levy court of the county of Washington, in the District of Columbia, shall not possess the power of assessing any tax on property in the city of Washington, nor shall the corporation of the said city be obliged to contribute, in any manner, towards the expenses or expenditures of said court, except for the one-half part of the expenses incurred on account of the orphans' court, the office of coroner, the jail of said county, and the opening and repairing of roads in

the county of Washington, east of Rock creek, leading directly to the city of Washington; but the said corporation shall have the sole control and management of the bridge across or over Rock creek, at the termination of K north, and shall be chargeable with the expenses of keeping the same in repair, and rebuilding it when necessary."

And then gave evidence to show that *that* the plaintiff, then and now a citizen of said city, was returning from Georgetown to said city on the day of May, 1854, and riding in one of the omnibuses running between said cities, and while crossing the said bridge in said omnibus, the said bridge fell, whereby the said omnibus, with the plaintiff therein, was precipitated into Rock creek, whereby he narrowly escaped drowning, was seriously bruized, his left arm broken, and his left hand crushed, insomuch that the said hand and arm have been rendered useless for life; that he was confined thereby to his house for a long time, under the care of the best medical attendance he could procure, and during the whole of said period of time suffered great bodily pain; and rested.

And thereupon, the defendants offered and gave evidence to show that in the year 1849 a certain ordinance was passed by the authorities of said city, as follows: (Copied in page)

That in conformity with said ordinance a committee, consisting of the mayor of the city of Washington and two practical and scientific workers in irons, were appointed; that the plan of said bridge was approved by said committee, and that they acted in good faith and with a view to the erection of a bridge adequate in plan, principle and strength, solidity and construction, to the purposes for which said bridge was required; that the opinion of scientific men was taken by said committee as to the plan or principle of said bridge, and that the same was erected in good faith, and under the belief that the same was in plan and principle, and in strength and solidity, and construction, suitable and adequate for the purposes for which it was required; that both the materials and work on said bridge were of the best description, and carefully examined in the progress of its erection by the agents of the defendants, and that the giving way of said bridge, in consequence of which the alleged damages were sustained, was the result solely of accident, and of a defect in the plan of said bridge; that said bridge was completed in the spring of 1850, and its strength and capacity were, on its completion, amply tested; that on the day of the defendants passed a certain other ordinance, as follows: (Copied in page .) Under which was appointed commissioner of the first ward of said city, in which the eastern abutment of said bridge was built, the same spanning a navigable stream, and the greater part of said bridge being beyond the corporate limits; that said commissioner discharged his duties connected with the inspec-

tion of said bridge, and never ascertained that the same was in any manner unsafe, defective, or out of repair, and never reported any unsoundness, defect, or want of repair to the defendants, who had no notice through their said officer or otherwise that said bridge was at or before the accident unsafe, unsound, or defective either in principle or fact. The defendants further gave evidence to show that there was not any indication at or before said accident, that the said bridge was unsafe, unsound, or defective in plan, principle, or in fact, and had been duly patented by the government; and rested.

And thereupon the plaintiff, to rebut the evidence so offered on the part of the defendants, gave evidence to show that the same scientific man, whose opinion was so as aforesaid taken by the defendants, stated to the defendants at the time he was so consulted, the span of the said bridge was 104 feet, and they submitted the plan to him, and he said the principle was correct, but it would not hold out indefinitely with iron bridges; that the said bridge is an iron bridge constructed on the plan of Rider's patent, and built by Rider himself: but the arch of this bridge was higher than ever had been attempted, a single span of one hundred and ten feet; and when Rider had contracted to build this bridge, he objected to and remonstrated against raising the arch of the bridge so high, but the defendants required it to be done, in order to accommodate the passage of canal boats, the said bridge being constructed over what is the basin of the Chesapeake and Ohio Canal Company in the said creek; and said Rider believes the said bridge fell by reason of the arch thereof being raised too high.

They further gave evidence by one of the said committee, that he had not been consulted originally about the plan of said bridge, but at that time he believed it to be a good plan; he is now satisfied, from further study and experience, that it was essentially and radically defective.

He further gave evidence to show, by another skilful and scientific worker in iron, that after this bridge fell, he was employed by the corporation to examine certain other bridges built by said Rider for defendants on the same principle, (except the arch was much less and the span not near so great,) and his opinion was at once formed that there is in the plan an inherent vice which makes every such bridge (not horizontal) unsafe and insecure, and as the arch is increased, that insecurity is increased; that within a year after the said bridge was rebuilt, the defendants changed the approach to said bridge, each end, by raising the same and extending it upon the bridge, and thereby adding about three tons to its original weight; and further gave evidence by said commissioner of the first ward, that he crossed said bridge a few days before it fell, and it was so tremulous and shook so violently that he was apprehensive it would fall; and further evi-

dence by divers persons, that for several days before the said bridge fell, they had observed that several of the iron braces of said bridge was broken, and some of the wedges had fallen out, and the bridge was loose and shook greatly when carriages passed over it; and rested.

And thereupon the defendants prayed the court to instruct the jury, as follows: "That upon the whole evidence aforesaid, the plaintiff is not entitled to recover in this action."

Which instruction the court gave, and to the giving thereof the plaintiff excepts, and prays the court to sign and seal this his bill of exceptions, which is accordingly done, this 1st day of December, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK. [SEAL.]

Memorandum.

On the trial of this cause, it is agreed that in this court, and in the Supreme Court, if the cause shall go there, either party may read as admitted in evidence the charters and by-laws of the corporation of the city of Washington.

CARLISLE & MAURY, *for Plff.*
W. D. DAVIDGE, *for Defts.*

Writ of error produced.

And whereas after, to wit, on the eighteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, the said plaintiff, by his attorney aforesaid, produced and filed in court here the United States writ for the correction of errors of and upon the premises, directed to the judges of the circuit court of the District of Columbia, commanding that the record and proceedings aforesaid, so as aforesaid had and done, with all things thereunto relating, be transmitted to the Supreme Court of the United States, at Washington, on the first Monday of December next; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, together with the said writ of error, citation, and copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this 4th day of November, 1859. [SEAL.]

JNO. A. SMITH, *Clk.*

99

IN THE SUPREME COURT.

ROGER C. WEIGHTMAN, vs. THE CORPORATION OF WASHINGTON. } No. December Term, 1861.

This is an action on the case brought to recover damages for injuries sustained by the plaintiff, from the falling of a bridge which the defendants were by their charter bound to construct and keep in repair. The bridge was over Rock Creek, at the termini of K street, in the City of Washington, and of Water street, in Georgetown, forming the great thoroughfare between the two cities. It was built of iron; an arch of a single span of one hundred and four feet. The plaintiff was crossing it in an omnibus. The bridge broke down. The plaintiff was crushed in its ruins, and his left hand and arm disabled, and disfigured for life.

The evidence tends to show culpable negligence in the defendants, and is full to make them chargeable for the consequence, unless they have an immunity from responsibility by reason of being a municipal corporation. The Court below was of opinion that no action would lie for such an injury, and so ruled, and it is submitted there was error in that ruling.

The bridge was comparatively new, and had been rebuilt, not long before it so fell. The power and duty of the Corporation in this respect will be found in the 13th section of the charter of 1820. 3d Laws U. S., p. 590. After subjecting the Corporation to the payment of one-half part of the expenses incurred by the Orphans' Court; the office of coroner, the jail of said county, and the opening and repairing of roads leading directly to the City of Washington, the section proceeds: "but the said Corporation shall have the sole control and management of the bridge across or over Rock Creek, at the termination of K street north, and shall be chargeable with the expense of keeping the same in repair, and rebuilding it when necessary."

There are large grants in the charter for the purposes of raising revenue to perform the various duties devolved upon the city authorities in the same instrument. "*After providing for all objects of a general nature*, the *taxes* raised on the assessable property in each ward shall be expended therein, and in no other." (Sect. 7). The other sources of revenue are manifold, and with the exception of the school tax, are all of them subject to such application for objects of a general nature as the Corporation may see fit.

Municipal corporations have a two-fold character; one political, by which they exercise the discretionary powers given to them as a body politic, and which in some cases involves a *quasi* judicial character; the other purely ministerial, in which they are discharging duties imposed upon them by law. Lloyd vs. Mayor of New York, 1 Seld., 374, 375.

In the exercise of their political powers they are to a certain extent, and while acting within the scope of the authority granted in their charter, not responsible for injuries to individuals. They may be subject to indictment, and to mandamus, injunction, &c., and are thus shown to be, not sovereign, and not vested with any, even *quasi* attributes of sovereignty, but merely public agents, vested with discretion which they may be compelled to exercise, and for the abuse of which they may be held to account.

In this particular case we will contend—

I. That the terms employed in the clause of the 13th section of the charter, are mandatory, and impose on the Corporation the duty to keep in repair and rebuild the bridge in question when necessary. Mason vs. Fearson, 9 How., 248.

II. The duty thus imposed on the Corporation is an absolute, and purely a ministerial duty. It involves no discretionary exercise of political or legislative power, and is precisely such as might have been devolved upon an individual. Storrs vs. City of Utica, 3 Smith, (17 N. Y.,) 104; Delmonico vs. City N. York, 4 Com., 1 Sand., 222; The Mayor, &c. of Albany vs. Cunliff, 2 Com., 165; Erie City vs. Schwingle, 22 Penn., 584; Rochester Lead Co. vs. City of Rochester, 3 Coms., 467.

III. The charter has provided the most ample means to enable the Corporation to discharge this duty, by the imposition of taxes, and granting licenses; by holding and owning property, and receiving the rents, issues, and ~~profits~~ of real estate, to be employed by the corporate authorities in the support and execution of this, among other duties, with which they are charged. Hutson vs. City of New York, 5 Sand., 297, (citing 7 John., 439; 7 Wend., 474; 2 Hill, 619; 6 *ib.*, 463,) and cases under the other points; and by reason thereof, they are responsible for any injury resulting from their negligence in performing this special duty.

IV. The franchises thus granted to the Corporation are the consideration on which they have, *by accepting the charter*, undertaken to dis-

charge the duties and burthens imposed on them as conditions of the enjoyment of those franchises.

1. No charter is of any effect until it is accepted by a majority of the grantees, or persons who are to be incorporated under it. Grant Cor., p. 18, and cases in note: ~~Butler~~ vs. Chapman, 8th, M. & W., 36, 85.

It must be accepted without condition as it is granted. Wilcock Mun. Corp., 30; Ang. & Am., (3d ed.,) chap. 2, § 7.

Even the inhabitants of a town, it was long ago held, could not be incorporated without the consent of the *major* part of them. *Ib.*, and see cases in note, and in 8th M. & W., 36.

2. The intention of the grant is to confer some advantage upon the grantees. *Ib.* It "is in fact in the nature of a contract between the Government and its subjects, the latter of whom undertake, *in consideration of the privileges bestowed*, to do what the Government isi nterested in having done." *Ib.*

Conrad vs. Trustees of Ithaca, ~~West~~ vs. Trustees of village of Brockport, 2 Smith, (16 N. Y.,) 191, and see the cases under the next point, and opinion of the court, 15 Barb., S. C. 440, 441, and 8 Barb., 645.

V. The line of demarkation between these duties, which are immediate parts of, or incident to their political powers, and those which are purely and absolutely ministerial, is not always well defined, and may sometimes give rise to doubt; but it may be safely affirmed that when a municipal corporation is distinctly charged with the execution of a specific duty for the benefit of the public and of individuals, and means are in the same or some other instrument put into their hands, adequate to its full performance, they may be compelled to perform it, and will be responsible to individuals injured by their negligent or improper performance of it. Mayor of Lynn vs. Turner, Cowp. 86; Grant Corp. 501; Henley vs. Mayor of Lyme, 5 Bing., 91; S. C. 1 Bing., N. C. 222 in error, 2 C. & F., 354, *by all the judges;* Mayor of New York vs. Furze, 3 Hill, 612; Mayor of Albany vs. Cunliff, 2 Coms., 165; Lloyd vs. City of New York, 1 Seld., 369; City of Pittsburg vs. Grier, 20 Penn. 64; the Mayor of Baltimore vs. Marriot, 9 Maryland, 160, 178; the city of Memphis vs. Lasser, 9 Hump., 761; and the cases under the preceding points.

VI. The bridge thus constructed by the Corporation was its property, which they could take down and dispose of at their pleasure. One end of it rested on soil beyond their municipal jurisdiction, if the whole bridge was not also beyond it, and the Corporation in its political char-

acter could have no control over it. Yet they were bound to repair and rebuild it out of their corporate funds, and they were responsible if it became a public nuisance, to any one receiving special damage from the manner in which they discharged that duty. Bailey vs. the city of New York, 3 Hill, 531; S. C. 2 Denio, 433. Having constructed it, they had no discretionary power as to keeping it in repair. Wilson vs. Mayor of New York, 1 Denio, 595; the Mayor of New York vs. Furze, 3 Hill, 612. (Kilty's Laws 1791. ch 45. § 1)

It follows, if the evidence in this case shows a specific duty imposed on the Corporation by its charter, and means to perform that duty; a negligent performance by the Corporation or its agents; and an injury to the plaintiff arising from such negligence, the plaintiff is entitled to recover in this action, and the judgment of the circuit should be reversed.

The charter imposes the duty, and gives the means to perform it.

At page 7 of the record will be found evidence tending to prove that when the Corporation was about to build this bridge they were cautioned that its plan was defective; the inventor himself remonstrated against raising the arch of the bridge as was done in this case, but the defendants required it to be done to accommodate the passage of canal boats under it, and he now believes "the bridge fell by reason of the arch being raised too high;" that the plan on which it was built is essentially and radically defective; that within a year after the bridge was built the defendants altered the approach to the bridge, adding about three tons to its original weight; that the commissioner of the city for that ward crossed the bridge a few days before it fell, and it was so tremulous, and shook so violently he was apprehensive it would fall; that for *several days* before it fell divers persons observed that *several* of the iron braces of the bridge were broken, some of the wedges had fallen out, and the bridge was loose, and shook greatly when carriages passed over it.

Here is evidence of want of care in the original construction of the bridge, and negligence in keeping it in repair after notice, or means of notice which they ought to have availed of, resulting in the injury to the plaintiff of which he complains.

BRADLEY & CARLISLE,

for Plaintiff in error.

ROGER C. WEIGHTMAN,
vs.
CORPORATION OF WASHINGTON.

In error to the Circuit Court of the United States for the District of Columbia.

BRIEF OF DEFENDANTS IN ERROR.

This was an action on the case to recover damages for alleged negligence of defendants in error in keeping in repair a public bridge.

The declaration alleged that at and before the time of the bringing of the suit, there was a common and public bridge over Rock creek, leading from K street north in the City of Washington, to Water street in Georgetown; that the defendants in error were bound to keep said bridge in repair; that, owing to their negligence in keeping the same in proper repair, it was, on the twentieth day of May, 1854, in an unsafe condition; and that, by reason of its unsafe condition, it broke and gave way whilst the plaintiff was passing over it in an ordinary vehicle, whereby the plaintiff was precipitated into Rock creek and injured.

Plea, not guilty.

The Case.

Rock creek is a navigable stream, where the tide ebbs and flows. Kitty's Laws of Maryland, 1792, ch. 51; Peyroux *vs.* Howard, 7 Pet., 304. R 6.

Before the cession by Maryland of the territory now constituting the District of Columbia, the Levy Courts of the respective counties of the State had jurisdiction of the repair of public roads and the repair and rebuilding of bridges. (Kitty's Laws, 1794, ch. 52 and 53; Id., 1704, ch. 21, and other Acts there mentioned.) These Courts were composed of the Justices of the Peace of the counties, or any five,

before the Act of 1798, ch. 34, by which the Governor and Council were directed to appoint, out of the Justices of each county, seven of the most discreet, &c., to be styled in their commissions Justices of the Levy Court.

After the cession, it was provided by Congress that the Justices of the Peace of the county of Washington should possess and exercise the same powers and duties as the Levy Courts of Maryland; (March 3, 1801, 2 Stat. at L., 115;) and by the subsequent Act of July 1, 1712, (Id., 771,) the powers of the Levy Court were enlarged and defined, and the appointment of its members was vested in the President of the United States; and by the 12th section of this Act it was provided that the expense of keeping in repair and rebuilding the two bridges over Rock creek immediately between the City of Washington and Georgetown should be borne jointly by said cities; the sum required for such repairs or rebuilding to be ascertained by the Levy Court, and, on sixty days' notice, to be paid over by said Corporations.

The Levy Court continued to have jurisdiction of the repairs and rebuilding of these bridges until the Charter of May 15, 1820, (3 Stat. at L., 583,) by the 13th section of which the control and management of one of them (the one mentioned in the declaration) was transferred to the defendants.

On the sixth day of September, 1849, the following ordinance was passed:

"*Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington*, That the sum of six thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated out of the general fund for erecting abutments and constructing an iron bridge over Rock creek, at the terminus of K street north, upon such plan as shall be approved by the committee hereinafter designated.

"SEC. 2. *And be it enacted*, That a committee shall be appointed, consisting of the Mayor and one member from each Board of the Council, who shall ad-

vertise for proposals for the erection of the abutments and construction of the bridge above authorized; the work to be given after thirty days' public notice to the bidder whose proposal shall be deemed by said committee to be for the best interest of the city."

In pursuance of this ordinance, a committee, consisting of the Mayor and two scientific and practical workers in iron, was appointed, who, acting in good faith, and with the view of building a bridge suitable in principle, construction, and strength, for the purposes for which it was required, and after taking the opinions of scientific men, approved a certain plan, under which the bridge was accordingly built, of the best materials and workmanship. (R. 6.) After the completion of the bridge, in the spring of 1850, its strength and capacity were amply tested. (Ib.) The evidence also shows the appointment by the defendants in error of a competent commissioner, whose duty it was regularly to inspect said bridge; that he did so inspect, and never discovered that said bridge was unsafe, defective, or out of repair, and never reported any unsoundness, defection, or want of repair; and that the defendants in error had no notice before the accident that said bridge was unsafe, unsound, or defective in its principle of construction, or in fact. (R., 6, 7.)

The principle upon which said bridge was constructed turned out to be vicious; and hence the accident. There was no evidence that the injury sustained by the plaintiff was owing to any other cause than the vice in the plan of construction. There was evidence that several of the iron braces were broken, and some of the wedges had fallen out; but not that the giving way of the bridge was in any degree owing thereto. On the contrary, the plaintiff in error himself showed that the cause of the injury was the defect in the plan.

The Court instructed the jury that the plaintiff was not entitled to recover. (R., 8.)

The declaration alleges a case purely of non-feasance; namely, neglect to repair a public bridge.

Assuming that there was evidence tending to show that the bridge was out of repair, and, owing thereto, the plaintiff was injured as alleged, it is indisputable that the defendants in error did all in their power towards keeping the bridge in proper condition, and that the neglect, if any, was that of the commissioner appointed to inspect the bridge.

Unless the defendants in error were chargeable in law with the non-feasance of a sub-agent necessarily employed to look after a public bridge, the only remedy of the plaintiff in error was against the party in default—the commissioner.

On behalf of the defendants in error, it will be contended:

I. That they are invested with the power over the bridge as the agents of the public, from public considerations and for public purposes exclusively, and are not responsible for the non-feasances or mis-feasances of sub-agents necessarily employed.

The nature of the power is public, and its object is the benefit of the public. The bridge is a public bridge, and so alleged. It spans a navigable stream, and one abutment only is within the corporate limits. (R 6.) The power is not granted as a private franchise. No toll can be exacted, nor can the corporation derive from the bridge any advantage or emolument whatever. This power and its correlative duty are imposed by the Legislature upon a public municipal corporation as an auxiliary in the work of government, and over such a corporation the Legislature has at all times, as the guardian of the public interests, the absolute control. Such corporations, unlike private corporations, cannot sustain their existence or powers upon the ground of contract between them and the Legislature, which may at its discretion alter or abolish. Dartmouth College *vs.* Woodward, 4 Wheat., 518, 636; Angell & Ames on Corp., sec. 31. The duties of private corporations rest on *contract*. The grant or charter may be accepted or refused. But public municipal corporations are established for purposes of government,

and do not depend on acceptance of charter. Id.; Angell & Ames on Corp., sec. 81.

It is not denied that a public municipal corporation may hold franchises or other property, in relation to which it is to be regarded as a private company, and subject to the responsibilities attaching to that class of institutions. Bailey *vs.* The Mayor, &c., of New York, 3 Hill's N. Y. Re., 531, 540; S. C. on error, 2 Denio, 434; Moodalay *vs.* The East India Co., 1 Brown's Ch. R., 469. But as regards the power under consideration here, it has not a single element of private ownership, but stands on precisely the same footing as the powers of the corporation over the streets of the city, which powers, it is judicially settled, are exercised by the corporation as agents of the public. Smith *vs.* Corporation of Washington, 20 How., 135, 148; Van Ness *vs.* Id., 4 Pet., 232.

Being agents of the public, the defendants in error are entitled to the same exemption from responsibility as other officials discharging like duties; and no principle of law is better settled than that public agents are not responsible for the mis-feasances or non-feasances of those whom they are obliged to employ. To such cases the doctrine of *respondeat superior* does not apply. Story on Agency, sec. 319—322; Hall *vs.* Smith, 2 Bing., 156, (9 E. C. L. R.;) Harris *vs.* Baker, 4 Maul & Selw., 27; Lave *vs.* Colton, 1 Ld. Raymond, 646; Whitfield *vs.* Lord Le Despencer, Cowp., 754; Duncan *vs.* Findlater, 6 Clark & Finell, 903, 910; Dunlop *vs.* Munroe, 7 Cranch, 242, 269; Bailey *vs.* The Mayor, &c., of New York, 3 Hill's N. Y. Re., 532; S. C. on error, 2 Denio, 434, 450; Schroyer *vs.* Lynch, 8 Watts, 453; Boody et al. *vs.* United States, 1 Woodb. & Minot, 151, 170; White *vs.* City Council, 2 Hill S. C. R., 571; Supervisors of Albany Co. *vs.* Dorr, 25 Wend., 440.

It may be urged that it is not sought here to hold the Corporation responsible for the neglect of its official subordinates, but for neglect in the appointments of them. But admitting, *argumenti gratiâ*, that for such neglect the superior would be liable, there

is no evidence to show that the Commissioner lacked capacity. Moreover, it has been settled by this Court that, under an allegation framed as here, evidence of neglect in making the appointment or of not properly superintending the subordinate is not admissible; but that for such neglect a recovery can be had only, if at all, upon a declaration specially framed to meet the particular kind of negligence relied on. Dunlop *vs.* Munroe, 7 Cranch, 242, 269. And to the same effect is Bishop *vs.* Williamson, 2 Fairfield, 495, 506.

What has been said as to the assumed neglect of the Commissioner applies equally to the committee by whom the plan was adopted, if neglect can be imputed to them under this declaration and the evidence.

But another and an equally conclusive answer to the pretensions of the plaintiff in error is found in the nature and legal character of the object upon which the power in question is to be exercised; and it will be contended:

II. That at common law no action lies against public municipal corporations or *quasi* corporations created for public purposes, or against other public officers, for neglect to repair a public bridge or highway, unless the obligation to repair rests on tenure, prescription, or contract. The only remedy is by indictment. City of Providence *vs.* Clapp, 17 How., 161 and cases cited, p. 162. In Bro. Abr., Title *Sur le case*, pl. 93, it is said that if a highway be out of repair so that a horse be mired and injured, no action lies, "*car est populus et serre reforme per presentment.*" In Russell *vs.* The Men of Devon, 2 T. R., 667, (the leading case upon the subject,) the precedent in Brooke was cited and approved, and it was held that no action lay to recover satisfaction for injury done to a wagon in consequence of a bridge being out of repair. In Riddle *vs.* The Proprietors of the Locks and Canals on Merrimack River, 7 Mass., 169, Parsons, C. J., took the same distinction between corporations created for the benefit of the public, as part of the government of the country, and those

created for the benefit of the corporators; and held that the former are liable only to information or indictment. See Mower *vs.* Leicester, 9 Mass., 947; Young *vs.* Comm's of Roads, 2 Nott and M. C., 555; Com. Dig., *Chemin*, H. 4, B. 3; Bartlett *vs.* Crozier, 17 John., 439; Morey *vs.* The Town of Newfane, 8 Bar. S. C., 645; White *vs.* City Council, 2 Hill's So. Car., 571; Haskell *vs.* Inhabitants of Knox, 3 Greenl., 445.

The cases of Mayor of Lynn *vs.* Turner, Cowp., 86, Henley *vs.* Mayor of Lynn, 5 Bing., 91, and S. C., 1 Bing. N. C., 222, are cases of *contract*, where the grantors of franchises or property held *on condition* that they would repair or do certain acts. So with the case from Carthew and Shower, cited by Park, J., in the latter case, where the agreement was implied from the nature of the franchise granted; namely, the privilege of keeping a ferry.

The English books are filled with indictments for neglect to repair; but no instance can be found of an action when the duty to repair was created by statute for the benefit of the public, and was irrespective of franchise or other private advantage.

III. But again: it is sought here to hold a municipal corporation, acting *pro bono publico*, responsible not only for its own neglect to repair, but also for that of its officer in failing to observe the ordinance for the inspection of the bridge.

In Towle *vs.* Common Council of Alexandria, 3 Pet., 409, the action was brought to recover damages for the non-feasance of an officer of a municipal corporation in failing to take a bond from an

auctioneer as required by an ordinance. But this Court held the corporation not responsible. In Levy *vs.* City of New York, 1 Sandf., 465, it was held that the city was not bound for an injury sustained in consequence of a neglect of its officers to enforce an ordinance prohibiting swine running at large. So also in Griffin *vs.* Mayor, &c., of New York, cited in Hutson *vs.* Mayor, &c., of New York, 5 Sandf., 303, 304.

IV. If an action lies at all, it is only where an indictment could be maintained. The declaration assumes that the duty of the defendant in error to repair is identical with that of a private corporation or individual in relation to its own property. No *notice* is averred of the want of repairs, nor are the facts requisite to support an indictment. The consequences of holding a public municipal corporation, or other public officer, to the strict responsibility resting upon individuals and private companies acquiring and using property for their private enjoyment and profit, must be apparent, especially as regards a bridge or highway open at all times to the public. The rigid rule applicable to individuals and private companies flows from their exclusive rights over their own property; and such a rule can never be applied when the same rights do not exist, as in the case of a bridge or highway.

It seems absurd to compel public corporations or other public officers to *guaranty* the proper condition of bridges and highways at all times, irrespective of circumstances. Hence the wisdom of the rule of common law that no private action lay. And where legislation has been resorted to, as in the New England States, the responsibility is not absolute, but made to depend upon special conditions prescribed by the respective statutes. But here the responsibility would be absolute, and, it may be added, ruinous.

W. D. DAVIDGE,
For Defendant in Error.

SCAMMELL & CO., Printers,
Cor. 2d & Indiana avenue, third floor.

Gregg v. Tesson

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SUPREME COURT OF THE UNITED STATES.

No. 100.

RICHARD GREGG, PLAINTIFF IN ERROR

v.

EDWARD P. TESSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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United States of America, Northern District of Illinois.

Pleas in the Circuit Court of the United States, for the Northern District of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. John McLean, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, judge of the District Court of the United States for the Northern District of Illinois, associate; on Monday, the twenty-first day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first year.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Be it remembered, that heretofore, to wit, on the 18th day of April, A.D. 1854, in the April term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, held at the city of Chicago, in said district, came into court the said Edward P. Tesson, plaintiff, by Purple and Sanger, his attorneys, who filed in open court his declaration, notice, and affidavit of service in the above entitled cause, in the words and figures following, to wit:

Declaration.

In the Circuit Court of the United States for the District of Illinois.
April Term, 1854.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Edward P. Tesson, who is a citizen of the State of Missouri, plaintiff in this suit, complains of Richard Gregg, who is a citizen of the State of Illinois, defendant in this suit, for that, whereas, on the 1st day of April, A.D. 1854, at the county aforesaid, he, said plaintiff, was possessed of the following described real estate: The equal undivided half part of a certain lot containing twenty-seven thousand four hundred and forty-nine square feet and seven thousand four hundred and forty-nine square feet, and seven-hundredths of a square foot, surveyed and designated as covered by claim number

thirty-three (33), in the southwest fractional quarter of fractional section nine, in township eight north, of range eight east, of the fourth principal meridian, Illinois, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri; the title to which he claims in fee. And the said plaintiff being so possessed thereof, the said defendant, on the 2d day of April A.D. 1854, entered into said premises, and unlawfully withholds from the plaintiff the possession thereof, to the damage of the said plaintiff one hundred dollars, and therefore he brings suit, &c.

And the said plaintiff avers that the real estate above described, and the matters in controversy in this suit, exceed in value the sum of five hundred dollars.

PURPLE & SANGER,
Plaintiff's Attorneys.

Mr. RICHARD GREGG:

You are notified, that on the first day of the next term of the Circuit Court of the United States, to be holden in and for the District of Illinois, at Chicago, or as soon thereafter as counsel can be heard, the foregoing declaration in ejectment will be filed, and thereupon a rule will be entered, requiring you to appear and plead thereto within twenty days after the entry of such rule; and that, if you neglect so to appear and plead, judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

April 7th, 1854.

PURPLE & SANGER,
Plaintiff's Attorneys.

State of Illinois, Peoria County, *ss.*

Leonard B. Cornwell, being duly sworn, says, that he served the foregoing declaration and notice on the defendant within-named, by giving to him a true copy of the same, this 7th day of April, A.D. 1854.

LEONARD B. CORNWELL,
Sheriff P. C., Ill.

Subscribed and sworn to before me, the clerk of Circuit of Peoria County, this 7th day of April, A.D. 1854.

Witness my hand and the seal of the Circuit Court of Peoria County aforesaid, this April 7th, 1854.

[SEAL.] JACOB GALE,
Clerk.

Indorsed: Filed April 18th, 1854. Wm. Pope, clerk.

And on the same day, to wit, the 18th day of April, A.D. 1854, in the record of the proceedings of said court in said cause is the following entry, to wit:

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

On filing the declaration in ejectment in this cause, and the notice in writing thereto subjoined, directed to the defendant, and on reading and filing an affidavit of due service of a true copy of the declaration and notice upon the defendant, it is ordered, that the defendant appear and plead in twenty days, or that his default be entered.

The bond for costs filed in the clerk's office of said court, in said cause, is in the words and figures following, to wit:

Bond for Costs.

In the Circuit Court of the United States for the District of Illinois, April Term, A.D. 1854.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which shall accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State or the United States.

April 7th, 1854.

ONSLOW PETERS.

Indorsed: Filed April 18th, 1854. Wm. Pope, clerk.

And afterwards, to wit, on the 11th day of October, A.D. 1854, came the said Richard Gregg, defendant, by C. Ballance, his attorney, and filed in the clerk's office of said court, his plea in the above entitled cause, in the words and figures following, to wit:

Plea.

United States of America, State and District of Illinois. In the Circuit Court, of the October Term, A.D. 1854.

EDWARD P. TESSON
v.
RICHARD GREGG. } In Ejectment.

Said defendant comes and defends the force and injury when, &c.,

and says he is not guilty of the trespass and ejectment in said declaration alleged, in manner and form, as the same is therein charged and set forth, and this he prays may be inquired of by the country.

C. BALLANCE,
For Defendant.

Indorsed: Filed, October 11th, 1854. Wm. Pope, clerk.

And afterwards, to wit, on the 18th day of January, A.D. 1856, in the December term, A.D. 1855, of the Circuit Court of the United States for the Northern District of Illinois, in the record of the proceedings of said court in said cause, is the following entry, to wit:

Trial by Jury.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Now, at this day came the parties, by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit: Norman Smith, S. H. Hogan, James Michie, Iram Nye, F. C. Jostlyn, S. B. Cobb, Ruben Taylor, Joseph Petrie, Gilbert B. Dake, W. J. Heath, William Barber, and Frederick Tuttle, who were duly elected, tried, and sworn, and after proceeding in the trial of the cause until the hour of adjournment, the further trial of the cause is postponed until to-morrow morning.

On the next day, to wit, the 19th day of January, A.D. 1856, in the record of the proceedings of said court in said cause, is the following entry, to wit:

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

The jury yesterday empanelled in this cause, this morning returned into court, and now came also the parties, by their attorneys, and after testimony had been closed, and a part of the arguments of counsel heard, the hour of adjournment having arrived, the further argument of counsel is postponed until Monday morning next.

And on the 21st day of January, A.D. 1856, in the record of the proceedings of said court in said cause, is the following entry, to wit:

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

The jury heretofore empanelled in this cause this morning returned

into court, and now come again the parties, by their attorneys, and after hearing the concluding arguments of counsel, and receiving instructions from the court, the jury retired to consider of their verdict, and it is ordered by the court, by consent of the parties, by their attorneys, that the jury, when they shall have agreed upon their verdict, may sign and seal the same, and disperse and meet the court in the morning.

On the next day, to wit, the 22d day of January, A.D. 1856, in the record of the proceedings of said court in said cause, is the following entry, to wit:

Verdict.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Now come the parties, by their attorneys, and the jury heretofore empanelled in this cause, this morning returned into court with the following verdict, to wit: we, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the land and premises described in the plaintiff's declaration, to wit: the equal, undivided half-part of a certain lot, containing twenty-seven thousand four hundred and forty-nine square feet and seven hundredths of a square foot, surveyed and designated as covered by claim number thirty-three (33), in the southwest fractional quarter of fractional section nine, in township eight north, of range eight east, of the fourth principal meridian, Illinois, in the county of Peoria, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri. We also find the estate established in the plaintiff, on the trial, to be an estate in fee simple, and we assess the damages of the plaintiff at the sum of one cent. It is thereupon considered by the court, that the plaintiff have and recover of the defendant, possession of the said undivided half of said described land and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of and from the said defendant the said sum of one cent, his damages so as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of one hundred and one dollars and forty cents, and that he have execution therefor.

And afterwards, to wit, on the sixth day of March, A.D. 1856, as yet of said December term, A.D. 1855, of said Circuit Court, in the record of the proceedings thereof in said cause, is the following entry, to wit:

Verdict set aside, and new trial.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

The defendant, by his attorney, comes and moves the court to vacate the judgment herein, against the defendant, on the 22d day of January, A.D. 1856, and also for a new trial under the statute, and it appearing satisfactorily to the court that all the taxed costs herein have been paid by the defendant, it is thereupon considered by the court, that the said judgment be vacated, the cause redocketed, and a new trial of the same had.

And on the 21st day of July, in the July term, A.D. 1856, of said Circuit Court for the Northern District of Illinois, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Motion for a Continuance Overruled.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

The defendant, by his attorney, moves the court, on affidavit filed, for a continuance of this cause to the next term, which motion is overruled by the court, and now come the parties, by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men to wit: Thomas Barnett, William Henry, H. M. Boggess, Peter Stout, John Brown, Rufus Ordway, Daniel P. Holt, William W. Crandall, M. Tagart, Elisha Putnam, and D. Johnson, who were duly elected, tried, and sworn, and, after hearing the evidence and receiving instructions from the court, the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the land and premises described in the plaintiff's declaration, to wit: the equal undivided half part of a certain lot, containing twenty-seven thousand four hundred and forty-nine square feet and seven hundredths of a square foot, surveyed and designated as covered by claim number thirty-three (33) in the southwest fractional quarter of fractional section nine (9), in township eight north, of range eight east, of the fourth principal meridian, in the county of Peoria, and State of Illinois, according to the survey approved 1st of September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri. We also find the estate, established in the plaintiff on the trial, to be an estate in fee simple, and we assess the damages of the plaintiff at

the sum of one cent. It is thereupon considered and adjudged by the court, that the plaintiff have and recover of and from the defendant possession of the land and premises so recovered as aforesaid, according to the force, form, and effect of his said recovery; and that he have a writ of possession therefor; and that he also have and recover of and from the said defendant, the said sum of one cent, his damages as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

And, on the 6th day of August, A.D. 1856, said defendant, by his attorney, filed in said Circuit Court, with the clerk thereof, his bill of exceptions, in the words and figures following, to wit:

Bill of Exceptions.

EDWARD P. TESSON
v.
RICHARD GREGG. } July Term, A.D. 1856.

Be it remembered, that on the trial of this cause, the plaintiff, to maintain the issue on his part, read in evidence to the jury,—

1st. An act of Congress, approved May 15th, 1820, for the relief of the inhabitants of the village of Peoria.

2d. An act approved March 3d, 1823, on the same subject.

3d. He offered to read from the 3d volume of American State Papers (a printed book, purporting to have been prepared by Walter Lowry, in pursuance of a resolution of the Senate of the United States, and printed by Duff Green), such part of a report, made by Edward Coles, register of the land office at Edwardsville, Ill., to the Secretary of the Treasury of the United States, as refers to this claim. To the reading of which, defendant objected, because there is no law making such a printed book evidence; but the court overruled said objection, and a part of said report was read from said book to the jury.

4th. He offered in evidence two plats or surveys which purported to have been made by order of the Surveyor-General of the States of Illinois and Missouri, in pursuance of said act of March 3d, 1823, and which surveys showed that the surveyor making them located said lot 33, of said Coles' report, on the land in question.

Said surveys were approved by said surveyor-general on the first day of September, A.D. 1840. The certificates authenticating said plats were in the words following:

(For plat, see original, page 14).

Claim No. thirty-three, situate in the southwest fractional quarter

of fractional section 9, in fractional township 8 north, of the base line range 8 east, of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Antoine Roi, by an act of Congress, approved the 3d of March, 1823, entitled, "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being No. 33 of the report made by the register of the land office at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled, "An act for the relief of the inhabitants of the village of Peoria in the State of Illinois."

Description: Commence at a post at the S. W. end of the N. W. edge of First street, which post is the south corner of this lot; thence N. 46½° W., adjoining public land, 320 feet 10 inches, to a post, at the S. W. end of the S. E. edge of Second street, which post is the west corner of this lot; thence with the S. E. edge of Second street N. 43½° E., 85 feet 6 inches and ⅔ of an inch, to a post, the north corner of this lot and west corner of lot No. 29; thence S. 46½° E., 320 feet 10 inches, to a post, in the N. W. edge of First street, which post is the east corner of this lot and south corner of lot No. 29; thence with the N. W. edge of First street S. 43½° W., 85 feet 6 inches and ⅔ of an inch, to the place of beginning.

This lot contains 27,449 square feet and $\frac{7}{100}$ of a square foot of land, equal to 24,000 square feet French measure, surveyed on the first of May, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

SURVEYOR'S OFFICE, ST. LOUIS, 14th May, 1849.

I certify that the above is a correct copy of the original plat and description of the survey of lot No. 33 of the new village of Peoria, in T. 8, N. of base line R. 8, E. of the 4 principal meridian, as the same is found in the record of lots in Peoria in this office.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Plat of the new village of Peoria and such of the out lots and field lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out boundaries of the said town, and continued connection of out lots and field lots, situate on sections 9 and 16, township 8 north of the base line, range 8 east, of the 4th principal meridian.

Description.

Begin at the upper end of the southeastern edge of First street, on the northwest bank of Lake Peoria, thence N. 46½° W. one hundred feet, to the eastern corner of unclaimed lot A. 420 feet 10 inches, the north corner of said unclaimed lot A., at the northeast end of the S.E. edge of Second street, 486 feet 10 inches, to the N.E. end of the N.W. edge of Second street; thence S. 43½° W. with the N.W. edge of Second street 256 feet 8 inches, to the intersection with the N.E. edge of street A.; thence N. 46½° W. with the N.E. edge of street A. 320 feet 10 inches, to the N.W. end of the N.E. edge of said street A.; thence S. 43½° W. 66 feet, to the north corner of lot No. 66, at the N.W. end of the S.W. edge of said street A. 108 feet 9⅓ inches, the west corner of lot No. 66 and north corner of unclaimed lot C. 322 feet 8 inches, the west corner of unclaimed lot C. and the north corner of lot No. 12, 408 feet 2⅔ inches; the west corner of lot No. 12, and the N.W. end of the N.E. edge of street B., 474 feet 2⅔ inches; the N.W. end of the S.W. edge of street B., and the north corner of lot No. 8, 709 feet 6 inches; the north corner of lot No. 15, 795 feet and ⅔ of an inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15, and east corner of lot No. 61, and north corner of lot No. 28; thence N. 46½° W. with the N.E. boundary of lot No. 61, 15 chains and 40 links, to the north corner of lot No. 61; thence with the N.W. boundary of lot No. 61, S. 43½° W. 5 chains and 52¼ links, to the west corner of lot No. 61; thence with the S.W. boundary of lot No. 61, S. 46½° E. 4 chains and 94 links, to the north corner of lot No. 51, at the intersection of the N.W. boundary thereof with the S.W. boundary of lot No. 61; thence with the N.W. boundary of lot No. 51, S. 43½° W. 4 chains and 88 links, to the west corner of lot No. 51; thence with the S.W. boundary of lot No. 51, S. 46½° E. 6 chains and 10 links, to the north corner of lot No. 40, at the intersection of the N.W. boundary thereof with the S.W. boundary of lot No. 51; thence with the N.W. boundary of lot No. 40, S. 43½° W. 3 chains and 23¾ links, to the west corner of lot No. 40; thence with the S.W. boundary of lot No. 40, S. 46½° E. 4 chains 34 links, to the N.W. end of the N.E. edge of street E., on the S.W. boundary of lot No. 40; thence S. 43½° W. 66 feet, to the N.W. end of the S.W. edge of street E., and the north corner of unclaimed lot E., 322 feet 8 inches, to the east corner of lot No. 31, at the intersection of the N.E. boundary thereof with the N.W. boundary of unclaimed lot E.; thence with the N.E. boundary of lot No. 31, N. 46½° W. 13 chains and 16 links, to the north corner of lot No. 31; thence with the N.W. boundary of lot No. 31, S. 43½° W. 3 chains and 88 links, to the west corner of lot No. 31, at the intersection with the N.W. boundary thereof with the N.E. boundary of lot No. 37; thence with the N.E. boundary of lot

No. 37, N. 46½° W. 5 chains and 5½ links, to the north corner of lot No. 37; thence with the N.W. boundary of lot No. 37, S. 43½° W. 7 chains and 66 links, to the west corner of lot No. 37; thence with the S.W. boundary of lot No. 37, S. 46½° E. 6 chains and 67½ links, to the north corner of lot No. 67, at the intersection of the N.W. boundary thereof with the S.W. boundary of lot No. 37; thence with the N.W. boundary of lot No. 67, S. 43½° W. 6 chains, to the west corner of lot No. 67; thence with the S.W. boundary of lot No. 67, S. 46½° E. 6 chains and 38 links, to the south corner of lot No. 67, on the N.W. boundary of lot No. 64; thence S. 43½° W. 1 chain and 66 links; the west corner of lot No. 64, and north corner of lot No. 20, 7 chains and 61 links; the west corner of lot No. 20, and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence with the S.W. boundary of lot No. 48, S. 46½° E. 6 chains and 88 links, the point of intersection of the S.W. boundary of lot No. 48, with the section line between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 13 chains and 93 links, N. 89½° W. of the corner of fractional sections 9 and 16, on the lake 8 chains, to the south corner of lot No. 48; thence with the S.E. boundary of lot No. 48, N. 43½° E. 1 chain and 6 links, the point of intersection of the S.E. boundary of lot No. 48, with the section line between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 12 chains and 38 links, N. 89½° W. of the corner, to fractional sections 9 and 16 on the lake, 4 chains and 25 links, to the east corner of lot No. 48, on the S.W. boundary of lot No. 20; thence with the S.W. boundary of lot No. 20, S. 46½° E. 2 chains, to the south corner of lot No. 20; thence N. 43½° E. 5 chains and 95 links, the east corner of lot No. 20, and south corner of lot No. 64, 13 chains and 61 links; the east corner of lot No. 64, and south corner of lot No. 43, 21 chains and 27 links, to the east corner of lot No. 43, and south corner of lot No. 34, at the S.W. end of the N.W. edge of Second street; thence S. 46½° E. 66 feet, the S.W. end of the S.E. edge of Second street, and west corner of lot No. 33, 386 feet 10 inches, the south corner of lot No. 33, 491 feet 1⅓ inches, to the lower end of the S.E. edge of First street, on the N.W. bank of Lake Peoria; thence along the N.W. bank of Lake Peoria the following courses and distances: N. 38° E. 176 links; thence N. 42° E. 432 links; thence N. 17¾° E. 150 links; thence N. 78° E. 72 links; thence N. 47½° E. 417 links; thence N. 37° E. 188 links; thence N. 44¾° E. 2448 links, to the place of beginning. Then, for connection with the public surveys, run from said place of beginning, along the N.W. bank of Lake Peoria, the following courses and distances: N. 44¾° E. 1081 links; thence N. 50¾° E. 1300 links, to the point of intersection of the section line, between sections 9 and 10, with the N.W. bank of Lake Peoria, which point is 2406 links, S. 0° 30′ W. of the corner, to sections 3, 4, 9, and 10, township 8

north, range 8 east, of the 4th principal meridian. Also, from the lower end of the S.E. edge of First street, the following courses and distances along the bank of the lake were taken for connection: S. 51¾° W. 198 links; thence S. 39° W. 819 links; thence S. 41¼° W. 216 links; thence S. 49½° W. 287 links; thence S. 85° W. 116 links, to the point of intersection of the section line, between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 2510 links, S. 89° 30′ E. of the corner, to sections 8, 9, 16, and 17, of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Office of the Surveyor-General for Illinois and Missouri.

St. Louis, January 31st, 1854.

I certify that the foregoing plat of the new village of Peoria, and of such of the out lots and field lots in the neighborahood thereof, as are connected with said new village, in one continuous survey and description of the out boundaries of the said town, and continued connection of out lots and field lots, situated on sections 9 and 16, township 8 north of the base line, range 8 east, of the fourth principal meridian, are correctly copied from the records of the surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

To the introduction of said plats in evidence defendant objected, because they were not certified by the commissioner of the General Land Office; but the court overruled said objection, and said plats were given in evidence to the jury.

5th. He then offered a patent to the legal representatives of Antoine Roi, to the introduction of which in evidence defendant objected; but the court overruled said objection, and said patent was read in evidence.

Patent to Roi's Representatives.

The United States of America to all to whom these presents shall come, greeting: Whereas there has been deposited in the General Land Office a certificate, numbered six, of the register and receiver of the Land Office at Edwardsville, Illinois, whereby it appears that in the report, dated 10th November, 1820, of Edward Coles, register of

the Land Office at Edwardsville, Illinois, the claim of Antoin Roi is entered as number thirty-three. And whereas it further appears from the certificate aforesaid, that the said Antoine Roi, the inhabitant or settler within the purview of the confirmatory act of Congress, approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois;" and that it has appeared to the satisfaction of the said register and receiver, that the said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive "a confirmation of claims or donation of any tract of land or village lot from the United States," and that the legal representatives of the said Antoine Roi, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot, which is described as follows, to wit: the lot containing twenty-seven thousand four hundred and forty-nine square feet, and seven-hundredths of a square foot, surveyed and designated as covered by said claim, number thirty-three, in the southwest fractional quarter of fractional section nine, in township eight north, of range eight east, of the fourth principal meridian, Illinois, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri. And whereas, in the confirmatory act aforesaid, of the 3d March, 1823, it is provided, that "nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever," &c.

Now know ye, that in consideration of the premises, and pursuant to the second section of the act aforesaid, of the 3d March, 1823, there is granted by the United States to the legal representatives of the said Antoine Roi, and to their heirs, subject to the proviso aforesaid, the lot of land above described. To have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Antoine Roi, and to their heirs and assigns, forever, subject to the proviso aforesaid. In testimony whereof, I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventieth.

By the President,

[SEAL.]

JAMES K. POLK,
By J. KNOX WALKER,
Secretary.

S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded, vol. 10, pages 103 and 104.

6th. He read in evidence a deposition of Madaline Glodon, which is as follows:

Deposition of Mrs. Glodon.

Deposition taken before me, Nathaniel Niles, county judge of the County of St. Clair, in the State of Illinois, under and by authority of the annexed commission, at the residence of Mrs. Madaline Glodon, in said county, to be read in the trial of two certain causes between William P. Bryant, plaintiff, and Richard Gregg, defendant; and between Edward P. Tesson, plaintiff, and Richard Gregg, defendant, pending in the Circuit Court of the United States for the Northern District of Illinois.

N. NILES.

Madaline Glodon, being sworn as a witness, deposes and says, in answer to interrogatories, as follows. She being French, not understanding English, Nicholas Glodon is sworn, and acts as interpreter.

Question 1st. Has your deposition been taken in this cause, at the instance of Charles Ballance, Esq., before T. M. Walsh, Esq., a notary public of St. Clair county? If so, state about what time the same was so taken, and at what place.

My deposition was taken by T. M. Walsh, Esq., in presence of Mr. Charles Ballance, in some cause of which I do not recollect the parties, about one year ago, at my then residence on the Bluff, near the Grand Marais, in this county. It was concerning the heirs of Simon Roy.

Question 2d. State whether, in that deposition, you was asked whether Simon Roi, or his daughter Margurite, died first; and if so, state what answer you gave to said question.

I said, in answer to said question, which was put to me in that deposition, that Margarite Roi, daughter of Simon Roi, died four years before her father, and that her husband, Paul Delanchaun, died four years before she died.

Question 3d. Which did die first, Simon Roi or his daughter Marguritte?

Marguritte died first, as I have before stated.

Question 4th. If you state that Margurite died first, state whether at her death she left any children.

I have heard that she had children, but never knew anything about them. I never knew or saw them. I knew Marguritte and her husband, Paul Delanchaun, very well.

Question 5th. When your deposition was taken before said Walsh, was there any interpreter present, or was any person sworn to interpret the questions to you, and your answer to the questions?

Answer. The only persons present at the taking of the deposition were Mr. Ballance, Mr. Walsh, and myself. No person was sworn as interpreter.

Question 6th. Were the questions put to you in the English or French languages, and in what language were your answers given, and by whom were the questions asked?

Ans. The questions were put to me in French and English, and when I said I did not understand, Mr. Walsh explained the questions in French; sometimes I did not understand his French, he speaks so badly. The questions were asked by both Mr. Walsh and Mr. Ballance. Mr. Ballance sometimes asked questions in English, and I told him I did not understand them.

Ques. 7th. Can you speak or understand correctly the English or French languages, or either of them, and which?

Ans. I speak and understand the French. I understand a few words only of the English.

Ques. 8th. State whether the said Walsh understands and speaks the French language as you do, and whether you can well understand him when he speaks French?

Ans. He does not speak French as I do. Some of his French I understand very well, and some not at all, when I first hear it. He had to repeat many words to me several times, and I understand his meaning in that language with great difficulty.

Ques. 9th. Do you know anything else of benefit to the plaintiffs? if so, state the same, if you have not already done so in your former deposition.

I know nothing more.

Cross-examined.

Question 1st. Although you may not be able to speak fluently the English language, can you not understand well enough what is said to you by others in the English language?

Answer. No, I cannot understand English well enough to know what is said to me in English. If I could understand it, I would not have an interpreter.

Ques. 2d. Does not your husband, Nicholas Glodon, understand and speak English well enough? and was he not present when said Walsh took your deposition; and did he not hear said Walsh read your deposition to you; and did he make any objection to said Walsh's translation of it?

Ans. My husband speaks pretty good English, and understands it. He was not present when my deposition was taken. He came into the house when they were done taking my deposition. He was not present when it was read. He could make no objection, because he did not hear it read to me.

Ques. 3d. Does not the said Walsh speak and translate the French language fluently? Did he not follow teaching French children the English language, for years, in the village of Cahokia, where nearly

the whole population were French people, and did he not marry, and for years, live with a French wife?

Ans. He cannot talk very good French. He formerly taught school in Cahokia, French children in English. All the people in Cahokia, that I know, are French. Mr. Walsh married a French wife, and lived with her for years, as I have heard. I never knew her as his wife. I knew her before marriage. The first time I ever saw Mr. Walsh, his wife was dead.

Ques. 4th. State if you know how many years since the death of Margaret Roi (afterwards Margaret Delongschamps), as near as you can. If you do not know, about how long was it before her husband, Paul Delongchamps, was married to Miss Chatrand, as his second wife?

Ans. Margaret Roi died about 18 or 19 years ago, perhaps more, perhaps less. Her husband, Paul Delongchamps (or Delaunchaun), died four years before she died, as I stated. I never heard of his marrying a Chatrand until now.

Ques. 5th. Was not said Margaret, who married said Delongchamps, the daughter of Simon Roi?

Ans. Yes.

Ques. 6th. Do you not know that said Antoine Roi had a wife, before he married said Miss Myette, the mother of Mary Gendron?

Ans. Yes, he was married first to Francoise Livernois, who has been dead 44 or 45 years.

Ques. 7th. Do you not know that said Mary Gendron was an illegitimate daughter of said Miss Myette, born before said Miss Myette was married to said Antoine Roi?

Ans. When he married her, she had the child in her arms, about 4 or 5 months old then. Antoine Roi always recognized the child as his own. I resided about three or four hundred yards from them at Portage des Sioux.

Ques. 8th. Were you not at the wedding of Antoine Roi and Miss Myette; and did you not see Mary Gendron at said wedding?

Ans. I saw Mary Gendron in the arms of her mother the day she was married. She was the said child of said Miss Myette.

Ques. 9th. Was not said Miss Myette reputed to be and recognized by and among all her neighbors as a woman of lewd and lascivious character? And was not this, her character, so general and universal, that you never heard it disputed? If you ever heard any person dispute this fact, please name him or her, and the time he or she first disputed it.

Answer. I never knew the woman to be of such a character, and never heard she was so. I never heard such a character imputed to her, nor disputed of her. She had her child in her arms when she was married; that is all I know.

Ques. 10th. Do you not know that it was Simon and not Antoine Roi that raised Mary Gendron, and that he and said Miss Myette

recognized said Mary as their child, as other people do their children?

Ans. Miss Myette, after the death of Antoine Roi, married Simon Roi. Simon Roi treated Mary as his niece, and she called him uncle. She lived with him and her mother after they were married.

Ques. 11th. Do you not know that said Antoine Roi had a son named Ambrose, who was married to a Miss Labbadie?

Ans. I do not; I knew one son of Antoine Roi, who died in the Missouri country. I do not know his name, nor that he was ever married.

Ques. 12th. Do you not know that Josette Latour, daughter of said Antoine Roi, was married to Balthasar Latour, and had children by him? and is not Louis Latour one of said children?

Ans. Yes; she had Louis Latour, who died in the Missouri country about 16 years ago, never having been married. I knew no other children.

Ques. 13th. Do you not know that previous to the birth of Mary Gendron, her mother, Miss Myette, lived in Portage des Sioux in the State of Missouri, and that at the time when, according to the course of natural generation, Mary Gendron must have been begotten, neither said Antoine nor said Simon were residing there, nor in said State?

Ans. When I first knew the mother of Mary Gendron she resided in Portage des Sioux, Missouri. Antoine Roi then lived there, and Simon Roi in Cahokia. When I first came from Portage des Sioux from Peoria, Antoine Roi was living there, and Simon was in Cahokia. They both left Peoria before the war.

her
MADALINE ⋈ GLODON.
mark.

State of Illinois, County of St. Clair, *set.*

I, Nathaniel Niles, county judge of said county, hereby certify that the foregoing deposition of Madaline Glodon was taken before me at the residence of said Madaline, as stated in the caption thereof, this 25th day of September, A.D. 1855. That at the said time and place the said deposition was subscribed and sworn to before me by said Madaline, the said witness, the same having been reduced to writing by me, and that I am not interested, nor of counsel in the causes in which the same was taken, nor in either of them.

In witness whereof I have hereunto set my hand on the day last above written.

NATHANIEL NILES.

Additional answer of Madaline Glodon to the 12th interrogatory (cross) propounded to her by the defendants in the above-entitled causes, viz.:

Do you not know that Josette Latour, a daughter of Antoine Roi, was married to one Balthasar Latour, and had children by him, and is not Louis Latour one of said children?

In addition to the answer already made and written in her deposition, the said witness Madame Madaline Glodon, wishes to make the following additional statement, to wit:

I never knew that Balthasar Latour had a son by his second wife, but I heard about 24 or 25 years ago that he had one. I never heard his name. He would now be about 26 or 27 years of age. Belthasar Latour had, by his first wife, Josette Roi, a son and a daughter, the son was called Louis. I do not remember the *the* name of the daughter. I never knew her name. She, the daughter, would now be about 50 years old if living, and the son about 48 years of age if living.

her
MADALINE ⋈ GLODON.
mark.

The foregoing supplemental deposition of Madaline M. Glodon was taken by and before me at her residence in said county, on this 6th day of October, A.D. 1855, and was subscribed and sworn to before me by said witness, having been reduced to writing by me under the authority of the commission hereto attached, to be read in evidence in the causes above entitled, as witness my hand on the day last aforesaid.

NATHANIEL NILES.

Deposition of Mrs. Gendron.

7th. He read a deposition of Mary Gendron, which is as follows:

Interrogatories to be propounded to Mary or Maria Gendron.

1st. What is your name, age, and residence?

2d. Did you or not know Antoine Roi in his lifetime? If so, state where he resided when you knew him, and in what manner you were related to him?

3d. Is he dead or alive? If dead, where and about what time did he die?

4th. State whether the said Antoine Roi was ever married, and if so, how many times?

5th. If you say that he was married twice, state as near as you can, from your own knowledge, or from information derived from his family and acquaintances, when each of his said wives died, if they are dead?

6th. What was his (Antoine Roi's) first wife's name before she was married to him? How many children did he have by said first wife, and what were their names?

7th. If you say that their names were Marie Louise, Josette, Ambrose, and Charles, state whether any of them are now living, and if dead, about what time each of them died or left the country, where they went to, and what became of them, to the best of your knowledge, and how long it is since they have been heard from by any of their friends and acquaintances?

8th. Was Mary Louise ever married? Did she ever have any children? If dead, when or about what time did she die? Is her husband dead or alive? If dead, how long ago did he die? What was his name?

9th. State whether Josette ever married? Did she ever have any children? If dead, when or about what time did she die? Is her husband dead or alive, if dead, when did he die?

10th. State whether Mary Louise and Josette died before or after her father Antoine Roi?

11th. Was Ambrose or Charles ever married? If you say that Ambrose was, state whether he ever had any children? What became of his wife? If dead, when or about what time did she die? And what became of the said Ambrose and Charles, and how long has it been since they or either of them has been heard from.

12th. What was the name of Antoine Roi's second wife? State whether she was your mother, and whether she is dead or alive? If dead, about what time and where she died?

13th. How many children had said Antoine Roi by his second wife, and what were their names?

14th. If you state that he had four, (*yourself*) *one not christened*, Ambrose, and Pierre, state whether any of them are still living except yourself? If dead, when and at what ages did they severally die?

15th. How long ago and at what place did Ambrose, Pierre, and the one not christened, die, and at what ages severally? And state whether either of them were ever married, and whether they or either of them left any children?

16th. State whether you are or are not the only surviving daughter or relative of the said Antoine Roi; and how long it is since he has had any children, brothers or sisters, father or mother.

17th. Did you know Simon Roi in his lifetime? Was he ever married, and to whom?

18th. If you say he was married twice, state about what time, when, and to whom he was married?

19th. Are his wives dead or alive? If dead, when or about what time did each of them die, and where? Had he any children by his first wife? If so, what were their names? Are they dead or alive?

20th. If you say that he had a son named Simon, and a daughter named Marguritte, state whether either of them were ever married, and to whom?

21st. If you say that Simon is dead, state when he died? whether

before or after his father Simon? and whether, at his death, he left any issue or children?

21½. If you say that Marguritte was married, state to whom, and about what time? whether she ever had any children? If so, what were their names, and whether they are dead or alive?

22d. If you say her child or children are dead, when did they die, and at what age, and whether before or after their mother's death?

23d. Is the said Marguritte dead or alive? If dead, about what time did she? Was it before or after the death of her father, Simon Roi? And if before, how long, and at what place?

24th. Were you, or not, present at the death of Simon Roi, or his daughter Marguritte, or either of them? or did you see them, or either of them, during their last sickness, or after their deaths?

25th. Did the said Simon Roi have any children by his second wife? Who was his second wife? If he had children by said second wife, what were their names? How long ago, and at what ages severally did they each or either of them die?

26th. If you say that Simon Roi had four children by his second wife, and that their names were Narcisse, Cyprian, Angelique, and one not christened, state whether any, or either of them, were ever married? whether they are dead or alive? and whether they died before or after their father Simon?

27th. How old were each of them at the time of their deaths,—Narcisse, Cyprian, Angelique, and one not christened? And if you say that Angelique died after her father Simon, how long was it after his death, and at what age she died?

28th. Had Antoine or Simon Roi, at the time of the death of Simon, any father or mother, brother or sister, child or children, or descendant or descendants of either living, except yourself, or those hereinbefore mentioned by yon? If so, what were their names?

29th. State whether there is at this time living, except yourself, any surviving descendant or relative of the said Antoine or Simon Roi, or either of them, and how long it has been since there has been any such other descendant or relative of said Antoine or Simon living?

30th. What relation were said Antoine and Simon Roi to each other?

31st. State whether, after the death of your father Antoine, your mother was married to Simon Roi? And if so, what was about your age at that time?

32d. Do you know any other matter or thing of benefit to either party? If so, state the same fully.

33d. Did you ever know one Balshazer Latour? If so, state whether he was ever married, how many times, and to whom, what were the first names of his wives severally, and whose daughters were they?

34th. Whose daughter was Catharine, his last wife?

N. H. PURPLE,
Plaintiff's Attorney.

To the 7th interrogatory propounded to said Mary Gendron, defendant objects, because the same is a leading question.

To the 8th, 9th, 10th, 11th, 12th, 14th, 15th, the same objection is made.

The 16th is objected to, because the witness is required to state a conclusion of law instead of facts, from which the court may educe the law.

To the 20th, 21st, 21½, 23d, objection is made, because they are leading questions.

To the 26th, 27th, 31st interrogatories to said Mary Gendron propounded, he makes the same objection.

Defendant, nevertheless, prays the following interrogatories may be propounded to said witness:

1st. Have you any interest in the result of this suit that you know of?

2d. Did John Reynolds, Samuel B. Chandler, William C. Kinney, or Narcisse Pensoneau, or either of them, ever pay your or husband, or Simon Roi, to the best of your knowledge and belief, anything for any deed executed by you and your husband for the property in controversy in this suit? or if any sale of the same by said Pensoneau, under a power of attorney, executed by you and your husband, was any part of the purchase-money ever paid or tendered to you or your husband?

3d. Have you any recollection of ever having seen said Antoine Roi?

4th. Were you not raised by Simon Roi, and did he not always recognize you as his daughter? and did you not recognize him, and no one else, as your father?

5. Do you not know that Antoine Roi's son Ambrose was married to a Miss Labbadie, and that after said marriage, and before her death she had a child? State the day and year, as near as you can, when said Ambrose Roi and his said wife died, and the day on which said Charles Roi died.

6. Had said Charles an eye of unusual appearance, on account of which he was vulgarly called Belle-eye?

7. Did not Antoine Roi's daughter, Josette, marry a man by the name of Baltazer Latour, and have children by him? If yes, how many? If said Josette is dead, state the day on which she died, if you can, or as near as you can.

8. Do you know that Pierre Roi, the son of Antoine, had no children or child at his death, either legitimate or illegitimate? Can you tell when he died?

9. If you have not stated, in answer to plaintiff's interrogatories,

state now the name of each child said Delongchamps had by said Margaret, and the date of the death of each, and the number of years since the death of said Margaret.

10. Was not said Paul Delongchamps alive after his said wife's death?

11. State how long after Antoine Roi's death was it before Simon Roi married your mother. What was the date of your mother's marriage to said Simon?

12. Did not said Simon cohabit with your mother before said marriage, and did she not have children by him before then? and if she had children by him before said marriage, how many?

13. Did not said Simon and your mother live together as man and wife as far back as you can remember? If not that long, how long did they live together as man and wife?

14. The parish records at Cahokia show that Simon Roi and Maria Louise Miette had a child born on the 12th of February, 1831, named Angelique. When did this child die, or, if you do not remember, about how old was she when she died?

15. Said records also show that they had a child to die on the 16th of January, 1822. What child was this, and how old was it?

Deposition of Mary Gendron, taken by and before me, Nathaniel Niles, county judge of St. Clair county, in the State of Illinois, under and by authority of the annexed commission, to him directed, at the residence of the said Mary Gendron, in said county, to be read in evidence on the trial of two certain causes, one between William P. Bryant, plaintiff, and Richard Gregg, defendant, and one between Edward P. Tesson, plaintiff, and Richard Gregg, defendant, pending in the Circuit Court of the United States for the Northern District of Illinois.

N. NILES.

Mrs. Gendron's Deposition.

Mary or Maria Gendron, being duly sworn as a witness, deposes and says as follows, in answer the interrogatories attached hereto and accompanying the commission also attached hereto, and entitled "Interrogatories to be propounded to Mary or Maria Gendron," and which are read over to her question by question. The said witness being a French lady, and not speaking English with facility, Robert Forsyth is sworn and acts as interpreter for her.

Interrogatory 1st, the witness answers as follows:

My name is Mary or Marie Gendron. I reside here, in St. Clair county, at Cantine, in the American bottom. My age, 39 years.

To interrogatory 2d, the answer is as follows:

Antoine Roi was my father. I recollect him very indistinctly; I

was very young when he died. He died at Portage des Sioux, in Missouri.

To interrogatory 3d. Answer. I recollect when he died; I was very young. Do not remember the length of time since he died. I remember seeing and hearing him call my mother to his bedside and embrace her, before he died.

To interrogatory 4th. Answer. I always understood that my father, Antoine Roi, was married twice.

To interrogatory 5th. Answer. I have been informed the first wife of Antoine Roi was dead when he married my mother. His second wife was my mother, and she has been deceased about twenty-four years.

To interrogatory 6th. Answer. The name of the first wife of Antoine Roi was Louisa; I do not know her family name; I never heard it, that I recollect. I have heard that my father had four children by his first wife, and I knew two. Their names were Marie, Louise, Josette, Ambroise, and Charles.

To interrogatory 7th, the following answer is given, to wit: Marie Louise died before the time of my recollection. She was married to one Papin, now dead also. I never knew whether she had any children; never heard of any. She died at Portage des Sioux, or thereabout in that region, as I have understood. Josette is dead. She married one Latour. Balthasar Latour has been dead 25 or 26 years. She had children; I think they all died before she did. Ambroise and Charles died. Charles was killed in the Missouri country, about 22 years ago. Charles was killed by Indians. Ambrose was married to Margaret Laverdeur. She died about one year before her husband, without issue. She never had any children.

To interrogatory 8th she answers: I have answered this in my answer to the 7th interrogatory. I do not know when or how long ago Papin, the husband of Marie Louise, died. She died before my father, I think; I do not know when.

To interrogatory 9th, answer: Josette Roi was *was* married to Balthasar Latour. She died 25 or 26 years ago. Her husband died about 16 or 17 years ago, in Illinoistown. His wife Josette, died at Portage des Sioux. She was his first wife. Her children died before she did, I believe.

To interrogatory 10th she answers as follows, to wit: Maria Louise Roi died before my father, and Josette after my father died, as I understood in the family. I do not know of my own knowledge.

To interrogatory 11th, the following answer is given: As I stated in my former answer to the 7th question, Ambroise Roi was married to Margarite Laverdeur, who died about one year before her husband, and left no children; Charles was never married. Ambroise and Charles died at the same time nearly, about 22 or 23 years ago, in the Missouri country.

To interrogatory 12th she answers as follows: The name of An-

toine Roi's second wife, my mother, was Mary Myette, or Marie Louise Myette, who died in Illinoistown, about 22 years ago.

To interrogatory 13th the answer is as follows: Antoine Roi had four children by his second wife, myself, Marie, wife of Touissaint Gendron, one that died before it was christened, Antoine, and Pierre. Antoine died when about seven years old. Pierre died about fifteen years ago, last February, without ever having been married.

To interrogatory 14th, answer: Pierre was twenty (20) years of age when he died. All my father's children are dead except me. The rest of this question is answered in my last answer.

To interrogatory 15th, answer: The child not christened was my mother's second child, and died about 37 years ago, three days old. The rest of this interrogatory is answered before.

To interrogatory 16th, answer: I am the only surviving daughter and relative of my father, Antoine Roi. I never knew any father or mother, brother or sister, of Antoine Roi, except one brother, Simon Roi, who died about 23 years ago, here at this house. The last child living of my father, except myself, was my full brother Pierre, who died 15 years ago, as I said, and here at this house.

To interrogatory 17th she answers as follows: I knew Simon Roi. He raised me. He was my uncle and my step-father. He was married twice; the second time to my mother, in Cahokia. I understood he had then been married, but did not know his first wife.

To interrogatory 18th, answer: I heard that the name of Simon Roi's first wife was Margaret. I did not know her family. I was about ten years old when he married my mother; that was about 30 years ago.

To interrogatory 19th, answer: I do not know when his first wife died, never having known her. His second wife, my mother, has been dead about 24 years. She died at Illinoistown.

He, Simon Roi, had a son Simon, and a daughter Margaret, by his first wife. Both of these children are dead long since.

To interrogatory 20th, answer: Of the two children of Simon Roi, Simon and Margaret, the son was never married. The daughter Margaret married Politte Delongchamps.

To interrogatory 21st, answer: Margaret Roi, daughter of my uncle Simon, married Politte Delongchamps, before her father married my mother. Simon, the son of my said uncle died at Illinoistown, about 29 years ago, and before his father, and was married.

To interrogatory 21½, answer: Margaret Delongchamps, daughter of my uncle Simon, had several children by her husband, said Delongchamps, all of which died young, before they were christened, and before their mother died.

To interrogatory 22d, answer: This question is already answered.

To interrogatory 23d, answer: Margaret Delongchamps, daughter of Simon Roi, my uncle, died about 28 or 29 years ago, at this place,

Cantine. She died before her father. I recollect very well when she died.

To interrogatory 24th, answer: I was not present at the death of Margaret, the daughter of Simon Roi, my uncle. I was present at the death of said Simon Roi, the elder, father of said Margaret. I was with him in his last sickness. He died in this house.

To interrogatory 25th she answers as follows: Simon Roi, my uncle, had five children by his second wife, who was my mother, 1st, Narcisse, 2d, Cyprian, 3d, Angelique, and 3d and 4th, two that died young, without being christened or named.

They all died without being married, and all died before their father except the girl Angelique, who died about fifteen days after her father died. They were all young at the time of their decease, and were never married. Angelique was eleven months old when she died. Narcisse and Cyprian were, the former one year old, and the latter four years old when they died.

To the 26th and 27th interrogatories, the witness answers that she has answered before and herein.

To interrogatory 28th the witness answers: Antoine Roi and Simon Roi, my father and uncle, at the time of their deaths, had no father or mother, brother or sister, child or children, nor descendant of either of them, except myself and Angelique Roi, who died about fifteen days after her father, Simon Roi, and my brother Pierre, who died about fifteen years ago, never having been married.

To interrogatory 29th, the witness answers: I am the only surviving descendant and relative of Antoine and Simon Roi, before stated. It is 15 years since there was any other descendant or relative of the said Simon and Antoine to my knowledge.

To interrogatory 30th. Answer. They were brothers.

To interrogatory 31st. Answer. This question is already answered.

To interrogatory 32d. Answer. I do not think of anything else of benefit to either party.

To interrogatory 33d. Answer. I knew Balthasar Latour. He was married twice, the first time to Josette Roi, my half-sister on my father's side, and the second time to Popone Papin, or Catharine Papin, who was the mother of Louis Latour. Louis Latour was the son of Balthasar Latour by his second wife. Of this I am sure.

To the 1st cross-interrogatory accompanying the commission hereto attached, to be propounded to the said witness, Mary Gendron, namely: "Have you any interest in the result of this suit that you know of?" the said witness answers as follows: I think I have.

To cross-interrogatory 2d, her answer is as follows: I have never received anything from any person for any interest in the property of my father or uncle. I recollect of my uncle and step-father, Simon Roy's, exchanging property in Peoria for an old horse not worth fifteen (15) dollars, with John Reynolds, of this county. This

trade was made many years ago, 28 or 29 years ago. I signed the deed, and at the time of acknowledging it, I told Narcisse Conoyer, the justice of the peace before whom I acknowledged it, that I signed it to carry out the bargain that my step-father had made. I never received anything, nor did my husband ever receive anything for this property. Nothing was ever offered to us for it by anybody, except by Mr. Ballance, who offered me fifty dollars.

To cross-interrogatory 3d. Answer. Yes, I have seen Antoine Roi. He was my father.

To cross-interrogatory 4th. I was raised by my uncle, Simon Roi. He never recognized me as one of his own children, only as his niece and step-daughter, and I recognized him as my father, as he raised me, and was my step-father. And after the death of my mother, he lived with me here until he died.

To cross-interrogatory 5th. Answer. Ambroise Roi was married to a Miss Laverdeur (never to a Miss Labbadie), and never had any children by her. He died about 23 years ago, in the upper Missouri country, and his wife died about a year before he did. Charles Roi died about the same time, killed by the Indians in the same country.

To cross-interrogatory 6th. Answer. Yes, Charles was called Belle-eye.

To cross-interrogatory 7th. Answer. I do not remember when Josette, daughter of Antoine Roi, and wife of Belthasar Latour died. She died at Portage des Sioux, about 29 years ago. I never knew their children, and only know of them from hearsay. I heard Latour, the father, say that his children had died before his wife.

To cross-interrogatory 8th. Her answer is as follows: No; Pierre Roi, son of Antoine Roi, came to live with me when 10 years old, and lived with me 10 years, and died here unmarried. He never had any children, legitimate or illegitimate.

To cross-interrogatory 9th. Answer. All the children of Margaret and Paul, or Politte Delongchamps, died young, and before their mother. She died 28 or 29 years ago, or thereabout, and died before her father, Simon Roi.

To cross-interrogatory 10th. Answer. Yes, Paul Delongchamps was alive after his wife's death.

To cross-interrogatory 11th. Answer. It was one and a half or two years after my father's death when Simon Roi married my mother. I do not know the date of their marriage.

To cross-interrogatory 12th. Answer. (I decline putting this question to the witness, and it is not propounded to her.

N. NILES,
Commissioner.)

To cross-interrogatory 13th. Answer. The priest objected to the marriage, as Simon was her first husband's brother, and they were married by a justice of the peace. I knew them as man and wife

when I was ten years old, when they were married by a justice of the peace. They did not live together before that time.

To cross-interrogatory 14th. Hnswer. Angelique Roi was this child, and this question has been answered on my direct examination. This child died 15 days after its father.

To cross-interrogatory 15th. Answer. Angeliqne was 11 months old when she died. If the child referred to in this question was not Angelique, I do not know who it was.

her
MARIE ⋈ GENDRON.
mark.

State of Illinois, St. Clair County, *set.*

I, Nathaniel Niles, county judge of St. Clair County, in said State, do hereby certify that the foregoing deposition of Mary Gendron was taken before me, at the residence of said Mary Gendron, in Cantine, in the American Bottom, in said county, this 26th day of September, A.D. 1855, that at the said time and place, the said deposition was sworn to and subscribed before me, by the said witness, Mary Gendron, the same having been reduced to writing by me, and the interrogatories and cross-interrogatories attached hereto, and to the commission herein, having been first propounded to said witness by me, and translated to her in French by the interpreter above named, except the 34th interrogatory of the plaintiff's, inadvertently, and 12th cross-interrogatory of defendant's advertently omitted.

In witness whereof, I have hereto set my hand, this 26th day of September, A. D. 1855.

NATHL. NILES.

Note by the Commissioner.

I consider the 12th interrogatory, addressed to Mary Gendron, as unfit to be addressed to any woman, white or black, and of whatever character. Madam Gendron is a highly respectable French lady, with a grown daughter by her side during the examination.

N. NILES,
Commissioner.

8th. He read a deposition of Isadore Lecompt, which is as follows:

Interrogatories to be propounded to Isadore Lecompt, Nicholas Bromenne, Baptiste Beckett, and Joseph Chartrand, severally, in each of the said causes before named.

1st. What is your name, age, place of residence, and occupation?

2d. Did you know Simon and Antoine Roi, or either of them, in

their lifetimes? If so, state whether they are dead or alive, and if dead, when and where did each of them die.

3d. Was Antoine Roi ever married, to your knowledge? If so, to whom, and how many times?

4th. If you say he was married twice, how many children did he have by his first wife, to your knowledge; and when and where did they, or any of them, die; or are any of them still living, and what are their names?

5th. State whether those who died, died before or after their father, Antoine Roi; and how old each one was at its death; and whether they left any issue or children surviving them.

6th. How many children had said Antoine Roi by his second wife, and what were their names?

7th. Are they dead or alive? if dead, when did each one die, and at what age? and state whether they left any child or children surviving them.

8th. Do you know Mary Gendron, wife of Touissant Gendron? If so, where has she resided since you have known her, and whose daughter was she reputed to be at the time you first knew her, and how old was she at that time?

9th. State whether Antoine Roi, and the mother of Mary Gendron, lived and cohabited together as husband and wife, and were or were not reputed to be married, and whether they acknowledged the said Mary to be their daughter, and whether she was not reputed to be such, among all her friends and acquaintances.

10th. Was Simon Roi ever married? and if so, when, and to whom?

11th. If you say that he was married twice, state whether he had any children by his first wife, and what were their names.

12th. If you state that he had two, Simon and Margaretta, state whether they, or either of them, are dead or alive, and if dead, how long ago, and at what age each died, and whether they died before or after their father, Simon, and how long.

13th. Was Simon, the son, ever married; or did he, at his death, leave any children or issue surviving him?

14th. Was Marguritte ever married? and if so, to whom?

15th. If you say she was married to Paul Delongchamps, state whether she ever had any children, and whether they are dead or alive. If dead, when did they die, and at what age did they die; before or after their mother Margurite, and about how long?

16th. State whether the said Marguritte died before or after her father Simon's death; if before, how long.

17. Did Simon Roi have any children by his second wife, to your knowledge? If so, what were their names; are they dead or alive? if dead, about how long ago did they each die, and at what ages?

18th. Did the said last-named children of Simon Roi die before or after their father? If before, about how long; were any of them

ever married; or did any of them leave any issue or children surviving them?

19th. Were you ever acquainted with one Belshazur Latour, or his wife Josette? Whose daughter was she? Is she dead or alive? if dead, when did she die, and did she die before or after her father, and did she leave any child or children, or issue surviving her, at the time of her death?

20th. State whether said Latour was married a second time, and what was the name of his second wife.

21st. State whether there is, at this time, living, any surviving relation or descendant of the said Antoine or Simon Roi, except the said Mary Gendron; and if so, how long it has been since there has been, to your knowledge, any such descendant or relative of the said Antoine or Simon, living.

22d. Had said Antoine or Simon Roi, at the time of the death of Simon, any father or mother, brother or sister, child or children, or descendant or descendants of either living, except the said Mary Gendron, and those hereinbefore mentioned by you? If so, state who they were, what were their names, and what has become of them?

23d. Do you know any other matter or thing of benefit to the parties to this suit or either of them? If so, state the same fully.

N. H. PURPLE,
Plaintiff's Attorney.

Boismenne's Deposition.

To Nicholas Boimenne alone.

1st. Has your deposition been taken in this cause before? and if so, before whom, at whose instance or request?

2d. Did you state in that deposition, that Mary Gendron, when you first knew her, was not reputed to be the daughter of Antoine Roi, or at any time thereafter?

3d. State whether said Mary was not reputed, when you first knew her, to be the daughter of Antoine Roi? Whether said Antoine and her mother did not live and cohabit together, as husband and wife? and were they not reputed to be married? and did they or not acknowledge said Mary to be their daughter?

4th. Have you not told Robert Forsyth and others, that when said Mary came to Illinoistown, and when you first knew her, she was reputed to be the daughter of Antoine Roi, and recognized and known as such? and if you have made any statement in your deposition taken before said Walsh different from this, is the same true or false, or has it been put down different from what you have stated it?

N. H. PURPLE,
Plaintiff's Attorney.

To the 21st interrogatory propounded to Isadore Lecompt, Nicholas Boismanne, Baptiste Beckett, and Joseph Chatrand, defendant objects, because it is an attempt to make the witness depose to questions of law instead of facts. Nevertheless, defendant prays that the following interrogatories may be propounded to said witnesses:

1st. Do you or not know that Antoine Roi died when Mary Gendron was an infant?

2d. Do you not know that Simon Roi and Miss Miette, the mother of Mary Gendron, lived together as man and wife long before they were married, and raised Mary Gendron; and, both before and after their marriage, recognized Mary as their daughter?

3d. Do you know that after the death of said Mary's mother, said Simon took up his lodging with said Mary, and lived with her until his death, although he then had a daughter alive that was married and a housekeeper?

4th. Do you not know that said Miss Miette was so common a woman that no one could tell with tolerable certainty who was the father of her children?

4th. Had said Miss Miette not the reputation of being a lewd woman?

5th. Were you not present in the Catholic Church in Cahokia when said Simon Roi and Miss Miette made public confession that they had been living in a state of adultery and fornication?

6th. If you were not present at said confession, do you not know or believe that it was made? If you say you do not know the fact, but believe it, state the facts on which you found said belief?

7th. Was it not stated at the time by the neighbors generally, that said confession was so made by them? and did you ever hear either of them, or any one else, deny the truth of said statement?

8th. I wish each of said witnesses to state, as well he possibly can, the number of years since the death of each of the children of said Antoine and Simon Roi? Particularly, how many years since the death of Margaret Delongchamps?

9th. Of said Chatrand, I would ask, although said Delongchamps may not have any children alive, has he not other heirs? Has he not a nephew named Louis Chatrand, and a niece named Margaret Martin?

10th. Of said Isadore Lecompte, I would ask, are you acquainted with Louis Latour? and have you not sworn, on a former occasion, that he was the grandson of Antoine Roi? and is that not the fact?

11th. Of Nicholas Boismanne, I would ask, do you not know that said Ambrose Roi was married to a Miss Labbadie, and had a child by her?

12th. How long since you saw said Ambrose, according to your best recollection?

13th. If you should state, in answer to any of the foregoing interrogatories, that Mary Gendron was the reputed daughter of Antoine Roi, was she not also the reputed daughter of Simon Roi?

14th. Was it not also reputed that she was a bastard, and born before either said Antoine or Simon had any knowledge of her mother?

15th. Is it not a fact that the first time you ever saw Mary Gendron was after the death of said Antoine, commonly called Little Roi?

Is not this the history of that part of the case:

After said Antoine lost his first wife, he married said Miette, at Portage des Sioux, in Missouri, said Mary having been previously born, while said Antoine had another wife. Afterwards Antoine died; and Simon brought her and said Mary Gendron into your neighborhood, where they raised said Mary. If this is not the truth of the matter, state what is the fact.

16th. Was not the fact of the illegitimacy of said Mary so well known, throughout the community, that no one ever disputed it?

17th. Did you ever hear either of said Rois, or said Miss Miette, or any one else, before the pending of these suits, pretend that said Mary was the legitimate daughter of either Simon or Antoine Roi?

C. BALLANCE.

Deposition of Isadore Lecompte.

Deposition of Isadore Lecompte, taken by and before me, Nathaniel Niles, county judge of St. Clair county, Illinois, under and by authority of the annexed commission, at the residence of Madame Mannetto Godin, in the town of Cahokia, in said county, in which town said witness resides, to be read in the cases above and in said commission mentioned.

N. NILES.

Isadore Lecompte, being duly sworn, deposes and says, in answer to the interrogatories of both parties attached hereto, and propounded by me to him as follows. (Said witness being a Frenchman, and not speaking English well, Robert Forsyth is sworn and acts and interpreter.)

To the 1st interrogatory, what is your name, age, place of residence, and occupation? Answer. My name is Isadore Lecompte; my place of residence is Cahokia; my occupation is that of a small farmer; I am 71 or 72 years of age.

To 2d interrogatory witness answers. I knew Simon Roi; I was once his neighbor. I never knew Antoine Roi. I recollect very well when Simon Roi told me that his brother Antoine had died,

somewhere up the Illinois, and that he, Simon, was going up to get his sister-in-law and her children and bring them down here to support them. He did bring them down, and married the widow.

To the 3d interrogatory the witness answers. All I know about this is from hearsay. Antoine Roi's widow told me that his first wife was a Livernois, and that her name, before she married, was Louise Miette.

To the 4th interrogatory. Answer. I think that the first child of Antoine Roi's first wife, by him, was Josette, who married Belthasar Latour; another one was named Ambroise, another Antoine or Charles, Antoine Charles; a fourth was Marie, who married Toussant Gendron. There was another son named Pierre, but I do not know whether he was by the same mother.

To the 5th interrogatory witness answers. I think they are all dead, and that they all died after their father, except Marie Gendron, who is still living.

To the 6th interrogatory. Answer. I heard that Josette died about the time the family was brought down here. I do not know at what time. She was the wife of Balthasar Latour. Do not know whether she died before or after her father, nor whether she left any children or not. Ambroise married a Miss Laverdeur, who died about 18 or 20 years ago, and before her husband. They had no children. Ambroise died up the Missouri country, and never married a second time. Charles is dead; he never married. All the children of Antoine Roi are dead, except Mary Gendron.

To the 6th interrogatory. Answer. On reflection, I remember now, that Mary and Pierre were children of Antoine Roi by his second marriage.

To the 7th interrogatory. Answer. Mary is alive now, and the wife of Touissant Gendron, and Pierre is dead; he was four or five years of age when he died. I know of no other children of Antoine Roi.

To the 8th interrogatory. Answer. I know Mary Gendron; she has always lived in this county, and since her marriage, at Cantine. She was about eight years old when I first saw her, at the time Simon Roi brought her and her mother from up the river. She always passed as the daughter of Antoine Roi and Miss Myette, his second wife. She lived here as my neighbor, and at Illinoistown, till she married, when she removed to Cantine, where she now lives.

To the 9th interrogatory. Answer. Antoine Roi and Miss Myette were reported to have been married. I did not see them, and only know them by reputation as man and wife. Mary Gendron was always acknowledged as their daughter, by the family, and so recognized by the neighbors, and old Simon Roi always called her his niece.

To the 10th interrogatory. Answer. Simon Roi was married twice. The first wife was a Frenier, and the second was a Miss Myette, the widow of Antoine Roi.

To the 11th interrogatory. Answer. One of the children of Simon Roi, by his first wife, was Margaret, and the other was Simon. These are all I knew.

To the 12th interrogatory. Answer. Both of these children, Margaret and Simon, died before their father. They died some 16 or 18 years ago, or thereabout, Margaret first, and some four or five years before their father, Simon Roi. I am not positive as to the time; there may be a difference of four or five years, more or less.

To 13th interrogatory. Answer. Simon Roi, the younger, was never married. He left no issue.

To 14th interrogatory. Answer. Margaret, daughter of Simon Roi, was married to one Paul (Hypolite) Delongchamps.

To 15th interrogatory. I heard that they had children; but I do not know; never knew them. I heard that they all died before their mother. I did not hear how long before.

To 16th interrogatory. Answer. Margaret, wife of Paul Delongchamps, and daughter of Simon Roi, died before her father. I do not know how long before.

To 17th interrogatory. Answer. Simon Roi had children by his second wife, but I do not recollect their names.

To 18th interrogatory. Answer. All the children of Simon Roi, by his second wife, died young and before their father. I do not know their ages. None of them were married.

To 19th interrogatory. Answer. I knew Belthasar Latour, but not his wife Josette, his first wife; I knew her only from information of the family. Her brother, Ambroise Roi, lived with me two years. He told me his sister Josette had been the first wife of Latour; and so I heard from the rest of the family, living near me; also, that she, Josette, was a child of Antoine Roi, by his first marriage. I never heard of any children of Belthasar Latour and said Josette.

To the 20th interrogatory. Answer. Belthasar Latour's second wife was a Papin. I do not recollect her given name. I knew Louis Latour, son of Belthasar Latour. From his age, he must have been born of the second marriage. He would now be 25 or 26 years of age, if living. Had he been a child of the first marriage, he would now be 35 or 38 years of age. He lived at Illinoistown, when I last saw him, about 13 or 14 years ago.

To 21st interrogatory. I do not know of any relative or descendant of any relative of Antoine Roi, or of Simon Roi, except Mary Gendron. I do not believe there is any other. I have known of none for 16 or 18 years.

To 22d interrogatory. Answer. I know of no relatives, such as those mentioned in this question, except Mary Gendron.

To 23d interrogatory. Answer. I am very confident that if Louis Latour had been a son of Belthasar Latour, by his first marriage with Josette Roi, from my intimacy with the family, I should have heard of it. The family of Simon Roi lived opposite to me in Caho-

kia, and were in the habit of visiting in my house almost every day; and several times a day, for two or three years after he married his brother's widow. I never heard of any children of Belthasar Latour and Josette Roi, and do not believe they had any.

Cross-examined.

To cross-interrogatory 1st. Do you not know that Antoine Roi died when Mary Gendron was an infant? The witness answers, Yes.

To cross-interrogatory 2d. Answer. Yes; they lived together, before they were married in the Catholic church; and Simon Roi recognized Mary as his niece.

To cross-interrogatory 3d. Answer. Simon Roi went and lived with his married niece, Mary Gendron, till he died in her house. His daughter Margaret was dead when he went to live with his niece.

To cross-interrogatory 4th. Answer. No. She was not a common woman.

To cross-interrogatory 4th (2). Answer. No.

To cross-interrogatory 5th. I was not present; but I heard it was so. My wife was present, and told me of it.

To cross-interrogatory 6th. Answer. I believe what my wife told me.

To cross-interrogatory 7th. Answer. Yes; it was generally talked of, and by everybody. The priest would not marry them without a public confession.

To cross-interrogatory 8th. Answer. I think Margaret Delongchamps has been dead about 18 years, more or less. I keep no books. I know that all the children of Antoine, and Simon Roi, his brother, are dead. How long ago, I do not know.

To cross-interrogatory 10th, addressed to witness Lecompte, he answers. No; I have never sworn that Louis Latour was a grandson of Antoine Roi. I knew him, as I have stated above. I do not believe he was such a grandson. He was a great deal too young to be a son of his father's first wife. He might have been, but I do not believe he was.

his
ISADORE ⋈ LECOMPTE.
mark.

I, Nathaniel Niles, county judge of the St. Clair Circuit Court, do hereby certify, that the foregoing deposition of Isadore Lecompte, was taken by and before me, at the residence of Madame Manette Godon, in the town of Cahokia, in said county of St. Clair (said town being the place of residence of said Lecompte), on 28th day September, A.D. 1855, under and by authority of the annexed commis-

sion, to me directed, in two certain causes pending in the Circuit Court of the United States for the Northern District of Illinois, wherein William P. Bryant is plaintiff, and Richard Gregg is defendant, and Edward P. Tesson is plaintiff, and said Gregg is defendant. That, at the said time and place, the said deposition was sworn to and subscribed before me, by the said witness, Isadore Lecompte, the same having been reduced to writing by me, and the interrogatories and cross-interrogatories hereto attached first propounded in their order.

As witness my hand, on the day last aforesaid.

NATHL. NILES.

Deposition of Boismenne.

9th. He read a deposition of Nicholas Boismenne, which is as follows:

Deposition of Nicholas Boismenne, taken by and before me, at the residence of said Boismenne, in St. Clair County, Illinois, to be read in evidence in two certain causes pending in the Circuit Court of the United States for the Northern District of Illinois, wherein William P. Byant is plaintiff and Richard Gregg defendant, and Edward P. Tesson is plaintiff and said Gregg is defendant, under and by authority of the annexed commission, to me, Nathaniel Niles, county judge of said county, in the State of Illinois, directed by said court.

N. NILES.

Nicholas Boismenne, being duly sworn as a witness, deposes and says, in answer to the annexed interrogatories to be propounded to him, and other witnesses named therein, as follows.

Interrogatory 1st. What is your name, age, place of residence, and occupation?

Answer. My name is Nicholas Boismenne. I am 66 years of age this next month. I live here in the American Bottom, in St. Clair County, Illinois, near Illinoistown. I am a farmer.

To 2d interrogatory. Answer. I knew Simon Roi. Have seen Antoine Roi once or twice. They are both dead, I suppose. I have so understood. Antoine died at Portage des Sioux, about the years 1820 or 1822. Simon died at Cantine, in this county, near about the year 1830, perhaps one or two years before, perhaps one or two years after.

To interrogatory 3d. Answer. I understood he, Antoine Roi, was married. I saw a woman that was reputed to be his wife. I do not know how many times he was married.

To interrogatory 4th. Answer. I have seen children here that were said to be Antoine Roi's children. I did not know the name of his wife. One of the children was named Ambroise, the other boy I did

not know. There were other younger children, but I did not know whether they were Antoine's or Simon's.

To interrogatory 5th. Answer. One child of Ambroise Roi died here, and one went up the Missouri. I do not know whether he is dead or not. They left no children surviving them. They must have died after their father. It was after Simon Roi brought the family of Antoine, his brother, from Portage des Sioux, to Cahokia.

To interrogatory 6th. Answer. I do not know.

To interrogatory 7th. Answer. I did not know that Antoine Roi had been married twice. The children I have named, I did not know whether they were by a first or second marriage.

To interrogatory 8th. Answer. I know, and knew Mary Gendron; she was 6 or 7 years of age when I first knew her, after Simon Roi brought her and her mother down from Portage des Sioux. She lived at Simon's house in Cahokia, and since her marriage, at Cantine.

To interrogatory 9th. Answer. I do not know. I never knew them when living together as man and wife.

To interrogatory 10th. Answer. Simon Roi had a wife when he first came to Cahokia; after her death, he married the woman that was said to be his brother's widow. I did not know the name of his first wife.

To interrogatory 11th. Answer. I knew two children by his, Simon Roi's, first wife. I do not know their names.

To interrogatory 12th. Answer. Both of these children died before their father, I think. They were a boy and a girl; the boy died before 1820, and before the father, Simon Roi, left Cahokia, to live in Illinoistown; the girl must have died between 1826 and 1830, in Illinoistown, when her father was living there; perhaps she died at Cantine.

To interrogatory 13th. Answer. The boy died without issue, never having been married.

To interrogatory 14th. Answer. The girl was married to Paul Delongchamps.

To interrogatory 15th. Answer. I do not know whether they had any children.

To interrogatory 16th. Answer. Simon Roi's daughter, wife of Paul Delongchamps, died before her father, but I do not know how long before.

To interrogatory 17th. Answer. I think Simon Roi had a little boy; I have seen him following his father, who called him "tu petite," I think this was a nickname. He was by his second wife, who was the reputed widow of Antoine Roi.

To interrogatory 18th. This boy died at the age of about eight or ten years, and after the year 1830, and also after his father died. This boy left no children.

Interrogatory 19th. Answer. I knew Belthazar Latour when he

came to Illinoistown; he then had a wife. I think her family name was Claremont. She married again after the death of Latour. She is now dead. I never knew any other wife of Belthazar Latour. He is dead. He had a son named Louis, I heard of him last year.

Interrogatory 20th. Answer. I do not know.

Interrogatory 21st. Answer. I do not know.

Interrogatory 22d. Answer. I do not know.

Interrogatory 23d. Answer. I know of nothing more that will be of benefit to either party. I never knew of any other wife of B. Latour.

To the interrogatories to be propounded to the witness Nicholas Boismenne, alone, he answers as follows:

To the 1st. Answer. Yes, my deposition was taken before T. M. Walsh, Esq. I do not know at whose instance.

To the 2d of said interrogatories, the witness answers as follows: I never stated in that deposition, nor in any other, that Mary Gendron, when I first knew her was not reputed to be the daughter of Antoine Roi. Of late, but not before, I have heard that she was not the daughter of Antoine Roi. I have heard, too, that Madame Gendron sent to Portage des Sioux and got the marriage certificate of her father's marriage with her mother. I do not suppose that the people whom I have heard talk on the subject know anything about it.

To 3d interrogatory. Answer. All I know about the matter is, that when Simon Roi brought Mary Gendron down from Portage des Sioux, she was recognized as the daughter of Antoine Roi, and sister of the two boys of Antoine Roi, Ambroise and another, whose name I do not recall, and that she was always so called and reputed.

To 4th interrogatory. Answer. Yes, I have told Robert that Mary Gendron, when I first knew her at Illinoistown, was reputed to be the daughter of Antoine Roi, and I never told any person differently. Any other statement different from this is not true, and I do not think I ever made any other and different statement from this now made.

Cross-examined.

To 1st cross-interrogatory. Answer. Antoine Roi was dead when I first knew Mary Gendron. She must have been an infant when he died.

To 2d cross-interrogatory. Answer. I do not know; I only knew them married. I never heard him call Mary his daughter. The neighbors spoke of her as old Roy's (Simon Roy's) daughter. They did not know.

To cross-interrogatory 3d. Answer. I think that old Simon moved up to Cantine village, and lived there with Mary Gendron when his wife died. I do not know whether his daughter, Delongchamp's wife, was living or dead when he moved there.

To cross-interrogatory 4th. Answer. I do not know, and never heard anything of her till lately. Did not know Miss Myette.

To cross-interrogatory 4th (2d). Answer. I do not know. Never heard it.

To cross-interrogatory 5th. Answer. No, I was not there.

To cross-interrogatory 6th. Answer. I have heard some people talk about such a public confession. I believe it was made.

To cross-interrogatory 7th. Answer. I have heard the neighbors say so.

To cross-interrogatory 8th. Answer. I can come no nearer the time elapsed since the death of the children mentioned in this question than I have already done.

To cross-interrogatory 11th. Answer. I know that Ambroise Roi married a Miss Laverdeur (not Labbadie or Labladie). She did not live long. Had no children.

To cross-interrogatory 12th. Answer. It is thirty years about since I saw Ambroise Roi.

To cross-interrogatory 13th. Answer. When Mary Gendron was living with her mother and Simon Roi, and during their marriage, she was called the daughter of Simon Roi.

To cross-interrogatory 14th. Answer. I do not know that Mary Gendron was reputed to be a bastard, and born before either Antoine or Simon Roi had any knowledge of her mother. I have heard this lately, not before. I do not know whether the people whom I heard talk on this subject knew anything about it or not.

To cross-interrogatory 15th. Answer. All I know about the matter of this question is, that Simon Roi brought the woman into my neighborhood, who was the reputed widow of Antoine Roi, with the family of said Antoine, including Mary Gendron, and that he, said Simon, afterwards married said widow.

To cross-interrogatory 16th. Answer. I never heard anything at that time of the legitimacy or illegitimacy of Mary Gendron.

To cross-interrogatory 17th. Answer. I do not know when this suit was begun. I never heard anything from Roi or Miss Myette on the subject. I never heard the legitimacy of Mary Gendron talked about or questioned until lately.

his
NICHOLAS ⋈ BOISMENNE.
mark.

I, Nathaniel Niles, county judge of St. Clair county, do hereby certify that the foregoing deposition of Nicholas Boismenne was taken by me and before me at the residence of said Boismenne, in St. Clair county, Illinois, on the 29th day of September, A.D. 1855, under and by authority of the annexed commission, to me directed, in two certain causes, pending in the Circuit Court of the United States for the Northern District of Illinois, wherein William P. Bryant is

plaintiff, and Richard Gregg is defendant, and in the other of which Edward P. Tesson is plaintiff and the same Gregg is defendant. That at the said time and place the said deposition was reduced to writing by me, and was sworn to and subscribed by the said witness Boismenne, the several interrogatories and cross-interrogatories attached hereto and to said commission, to propounded to him, having been first propounded to him by me, and his answer thereto taken in their order, as witness my hand, on the day last aforesaid.

NATHANIEL NILES,
Commissioner.

Deposition of Joseph Chatrand.

10th. He read a deposition of Joseph Chatrand, which is as follows:

Deposition of Joseph Chartrand, taken by and before me, N. Niles, county judge, &c., under and by authority of the annexed commission, to me directed, out of the Circuit Court of the United States for the Northern District of Illinois, at the residence of said Chartrand, in St. Clair County, Illinois, on the 29th of September, A. D. 1855.

N. NILES.

Joseph Chartrand, being duly sworn as a witness, deposes and says, in answer to the interrogatories annexed hereto, and to the commission attached, to be propounded to him and other witnesses, as follows: (The witness being a Frenchman, not speaking English with facility, and speaking French, Robert Forsyth is sworn, and acts as interpreter herein.)

To the 1st interrogatory, the witness answers: My name is Joseph Chartrand. I reside in St. Clair county, Illinois, near Illinoistown. I am 39 years old, and by occupation a farmer.

To 2d interrogatory, answer: I knew but one Roi, the father of Simon Roi and Margaret Roi. He, the father, died at Cantine, in this county.

To 3d interrogatory, answer: I never knew Antoine Roi.

To 4th interrogatory, answer: I know nothing of the matter of this question.

To 5th interrogatory, same answer.

To 6th interrogatory, same answer.

To 7th interrogatory, same answer.

To 8th interrogatory, answer: I knew Mary Gendron. She was a Roi. I knew her before her mother married the Roi who died at Cantine. She was the daughter of his second wife.

To 9th interrogatory. I never knew Antoine Roi, nor the father of Mary Gendron.

To 10th interrogatory, answer: The Roi who died at Cantine was

married when he first came to Cahokia, and when I first knew him I did not know his wife's name. His second wife was his sister-in-law, and the mother of Mary Gendron. I did not know her name.

To 11th interrogatory, answer: He, said Roi, had two children by his first wife, one son, Simon, and one girl, Margaret.

To 12th interrogatory, answer: Both these children died before their father; the boy was 19 or 20 years of age when he died; the daughter was married when she died.

To 13th interrogatory, answer: Simon, the son, was never married that I know of.

To 14th interrogatory, answer: The girl, Margaret, was married to Paul Delongchamps.

To 15th interrogatory, answer: She, Margaret, never had any children that I know of. I don't recollect any. I was small when she died. We live near each other.

To 16th interrogatory, answer: The said Margaret died before her father, and about 12 years before. I am not certain.

To 17th interrogatory, answer: Simon Roi had one child by his second wife, who died at 3 or 4 years of age. This was all I knew.

To 18th interrogatory, answer: This child died before its father.

To 19th interrogatory, answer: I knew Belthasar Latour. I knew nothing about Josette Roi, nor whose daughter or wife she was.

To 20th interrogatory, answer: I know nothing about this. Mary Gendron and Belthasar Latour, claimed a relationship with each other; but I know nothing about any.

To 21st interrogatory, answer: I know of no relations or descendants of Antoine Roi or Simon Roi, except Mary Gendron. I never knew Antoine Roi. Simon Roi called her his niece, and she called him her uncle.

To 22d interrogatory, answer: I know of no such relations of Simon and Antoine, except Mary Gendron, and those heretofore mentioned. I know not Antoine Roi's relations or descendants.

To 23d interrogatory, answer: I know of no other matter or thing which I can now think of. I was a near neighbor of the Roy who died at Cantine, one or two years.

Jos. Chartrand cross-examined.

To the 1st cross-interrogatory of the defendant, the witness answers: I do not know. Mary Gendron must have been an infant when her father died. She was about 6 or 7 years old when I first knew her. We were children together.

To the 2d cross-interrogatory, answer: I have heard it said that Simon and his wife lived together some time before they were married. He always recognized Mary, not as his daughter, but as his niece.

To 3d cross-interrogatory, answer: No; this Roi's daughter, the

wife of Paul Delongchamps, was dead when he, the father, went to live with Mary Gendron.

To the cross-interrogatories 4, 4, answer: I do not know Miss Myette, if she was the wife of this Roi, and the mother of Mary Gendron. I never heard any such imputation against her; never knew any such character to be imputed to her.

To the cross-interrogatories 5, 6, 7, answer: I was not present, and never heard of any such confession as that referred to in these questions.

To cross-interrogatory 8th, answer: It is about 30 years and upwards since the death of Margaret Delongchamps. I have stated nearly as I can the times since that of the other children.

To cross-interrogatory 9th, addressed to this witness, he answers: I know of a nephew of Paul Delongchamps named Louis Delongchamps, and a niece named Margaret Delongchamps; the former living in Cantine village, the niece in Flourissant, Mo. I know of none named Louis Chartrand and Margaret Martin. Paul Delongchamps is dead.

his
JOSEPH ⋈ CHARTRAND.
mark.

State of Illinois, St. Clair County, *set.*

I, Nathaniel Niles, do hereby certify that the foregoing depositions of Madaline Glodon, Mary or Marie Gendron, Isadore Lecompte, Nicholas Boismenne, and Joseph Chartrand, were taken by and before me, at the places and on the days mentioned in the captions, and certificates thereto respectively signed by me, under and by authority of the annexed commission to me directed, in two certain causes, pending in the Circuit Court of the United States for the Northern District of Illinois, wherein Wm. P. Bryant is plaintiff, and Richard Gregg is defendant; and in the other, Edward P. Tesson is plaintiff, and the said Gregg is defendant. That on the said times and places, namely, on the 25th, 26th, 28th, and 29th days of September last, the said witnesses, at their respective places of abode (except the said Lecompte as aforesaid), swore to and subscribed the said depositions (said Lecompte at the residence of Madame Godin); the same having been by me reduced to writing, and the interrogatories and cross-interrogatories, attached hereto and to said commission, to be propounded to said witnesses respectively, having been by me put to them, and their answers thereto taken down in their order; and that I am not of counsel or attorney for any or either of the parties to said suits or causes, nor interested in the event of the same, or of either of them.

As witness my hand, this 6th day of October, A.D. 1855, at Belleville, State of Illinois.

NATHL. NILES.

11th. He read deposition of Mrs. Glodon, which is as follows:

Mrs. Glodon's Deposition.

Be it remembered, that on the 15th day of May, A.D. 1855, application was made to me, Narcisse Pensoneau, a notary public in and for the county of St. Clair, and State of Illinois, upon the affidavit of Norman H. Purple, stating that he was the counsel and attorney for the plaintiff in a suit then pending in the Circuit Court of the United States for the Northern Circuit and District of Illinois, wherein Edward P. Tesson was plaintiff and Richard Gregg defendant. That the further testimony of Madaline Glodon, whose testimony had heretofore been taken in said cause, was material and necessary in said cause for the plaintiff in the prosecution of the same. That the said Madaline Glodon lived in St. Clair county, in the State of Illinois, more than one hundred miles from Chicago, where the court at which said deponent expected the said cause would be tried was appointed by law to be held, and that Richard Gregg, the defendant, and Charles Ballance, his attorney, both resided at Peoria, about two hundred miles from St. Clair county, where the examination of said witness was expected to be taken, and about one hundred and sixty miles from Chicago aforesaid, where the court at which said deponent expected said cause to be tried was appointed by law to be held. And I was requested, on the behalf of the said Edward P. Tesson, that the said Madaline Glodon might be examined according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered that the said Madaline Glodon should be examined *de bene esse* before me, at her residence, in St. Clair county, Illinois, on the 16th day of May, A.D. 1855, at 2 o'clock P.M. of said day. And the said Madaline Glodon, appearing before me at her residence in St. Clair county aforesaid, on this 16th day of May, A.D. 1855, at 2 o'clock P.M. of said day, I have therefore proceeded with the said examination.

And the said Madaline Glodon being carefully examined, and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

That she is now 61 years of age, and a resident of St. Clair county, State of Illinois. That she resided in the village of Peoria, Ills., from the year 1806 to 1812. That her and her first husband, Antoine Lapence, then left Peoria with other inhabitants of said place, and stopped at Portage Da Sue, where they remained from the fall of 1812 to March 1813. That when residing in Peoria, she was acquainted with Antoine Roi, who was reputed to be married.

That about the winter of 1813, the said Roi and wife, who was a Miette, was married at Portage Da Sue (legally, as she was informed).

That said Roi had two children, who died without issue. That

while at Portage Da Sue, said Roi's wife had a child, whose name was Mary. That about the spring of 1813 that herself and husband Lapence removed to St. Clair county.

And that about 15 years after, said Antoine Roy and wife, and daughter Mary, also moved to Illinoistown, in said county of St. Clair.

That some three or four years after moving, said Roi died, leaving his widow and said daughter Mary. Some years after said widow died; the said Mary, their daughter, then married Tousant Gendron; that said Mary and Gendron, her husband, are now living in said county of St. Clair, and are the only surviving heirs of the said Antoine Roi; that she was well acquainted with said Roi; that he had one brother, Simon Roi, but had no other brother or sister, or descendants of either brother or sister; that the only survivors of either said Antoine or Simon Roi is said Mary Gendron. Further states that she knows of no other matter of interest to the parties in said above-entitled suit.

her
MADALINE ⋈ GLODON.
mark.

Sworn to and subscribed before me, this 16th day of May, A.D. 1855.

[SEAL.] NARCISSE PENSONEAU,
Notary Public, St. Clair Co., Ill.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said Madaline Glodon with her mark; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand and official seal, at the county of St. Clair, in the State of Illinois, this 16th day of May, A.D. 1855.

[SEAL.] NARCISSE PENSONEAU,
Notary Public, St. Clair Co., Ill.

12th. He read another deposition of said witness, which is as follows:

Be it remembered, that on the 29th day of , A.D. 1854, Norman H. Purple personally appeared before me, and made oath that he was counsel in a suit then depending in the Circuit Court of the United States for the Circuit and District of Illinois, wherein Edward P. Tesson was plaintiff, and Richard Gregg was defendant; and that the testimony of Madaline Glodon, of the county of St. Clair, and State of Illinois, was material and necessary for the said plaintiff in the prosecution of such suit; and that said Madaline Glodon lived at St. Clair county, in the State of Illinois, more than one hundred miles from Chicago, where the court, at which he expected said cause to be tried, was appointed by law to be held. That Richard Gregg,

the above-named defendant, resided at Peoria, Illinois, about one hundred and fifty miles from St. Clair county, the place where the examination of the said witness is expected to be taken as aforesaid; and that Charles Ballance, his attorney, resided at Peoria aforesaid, about one hundred and fifty miles from St. Clair county aforesaid; and that the said Norman H. Purple, in behalf of the said Edward P. Tesson, requested me that the said Madaline Glodon might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said Madaline Glodon should be examined, *de bene esse*, before me, at the residence of Nicholas Glodon, in St. Clair county, on this 29th day of May, A.D. 1854; and the said Madaline Glodon appearing before me at the place and on the day and time last aforesaid, I have therefore proceeded with the said examination.

And the said Madaline Glodon, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith:

Mrs. Glodon's Deposition.

That she was born at the Falls of Niagara, in the State of New York, and is now fifty-seven (57) years of age; that she was two months old when she came to Peoria, in the State of Illinois, as she was informed by her father, Louis Labosier; that she lived in Peoria all the time till she was eight years of age, when she removed to Cahokia, in Illinois, where she lived about three years, and then returned to Peoria, and married there at the age of eleven (11) years with Antoine Lapence. She left Peoria in the war when the village was burned, and the inhabitants driven off by Capt. Craig, about forty-four (44) years ago. Witness says that she was well acquainted with Antoine Roi; she knew him at Peoria, at Portage des Sioux, and in this county, where he died about twenty-six years ago last October, at Illinoistown.

Said Antoine Roi was a settler in Peoria, on the lowest lot in the village. His brother Simon lived on the next lot above. Antoine Roi was married at Peoria, and had two children,—a boy and girl,—the boy died in his minority without issue; the daughter was married in this county of St. Clair, and died leaving one child, a boy, who died at about fifteen (15) years of age without issue. Her husband also died in this county. They have all been dead about ten years and upwards. Antoine Roi had no other relation (brother or sister), except the said Simon Roi, to the knowledge of deponent.

Antoine Roi married his second wife (a Miss Miette) at Portage des Sioux. His first wife having died, they lived together as husband and wife, and were married. While so living together, said Antoine and his second wife had a girl living with them who was reputed to be their daughter, and was recognized by them and bap-

tized as their daughter. Her name was Mary Roi. She is now the wife of Touissant Gendron, and resides in this county, and has resided here ever since she was 10 years of age, that is, for about 28 or 30 years. She is now about 40 years of age. She has been the wife of said Gendron about 19 years. Antoine Roi never had any other children.

Witness further says, that there has been no other descendant besides said Mary Gendron, or any other relation of said Antoine Roy, living within the last 10 or 11 years.

Further, the said witness, Madaline Glodon, saith, that Simon Roy died about 18 years ago. He was married twice. His children all died before he died. He had two children, a son and daughter,—Simon and Margaret. Simon, the son, died without issue. Margaret, the daughter, married Paul Delongchamp, and had one child, which died in infancy. She afterwards died without any other issue. The son, daughter, and grandchild of said Simon Roy, all died before he died. Said Simon Roi left no other relative, to deponent's knowledge, than his niece Mary, the present wife of Touissant Gendron. She, deponent, was well acquainted with both families of Antoine and Simon Roy for a period of 40 years. She knew them as well as she knew any other family. There was never any other Antoine or Simon Roy who lived at Peoria.

her
MADALINE ⋈ GLODON.
mark.

And I do further certify, that the foregoing deposition of the said Madaline Glodon was taken by me, and by me reduced to writing, on the day and time and at the place in the foregoing order mentioned, and that the same was subscribed by said witness in my presence, by her making her mark at the foot of said deposition (she not being able to write her name); that I am not of counsel for either party in said cause.

Witness my hand, and the seal of the County Court of St. Clair County, at St. Clair county, in the State of Illinois, this 29th May, A.D. 1854.

NATHL. NILES,
C. J., County Judge of St. Clair County, Ills.

State of Illinois, St. Clair County, *ss.*

I, John Scheel, clerk of the County Court for St. Clair County, and ex officio recorder of civil commissions in and for said county, certify, that Nathaniel Niles is now, and was on the 29th day of May, 1854, county judge of St. Clair county, Illinois, duly elected, commissioned, and qualified; that his signature to the foregoing certificate is genuine, and that full faith and credit is and ought to be given to all his official acts as such.

Witness, John Scheel, clerk of said County Court, and the seal thereof, at Belleville, this 30th day of May, 1854.

[SEAL.]

JOHN SCHEEL.
By P. LEITZ,
Deputy.

Isadore Lecompt's Deposition.

13th. He read another deposition of Isadore Lecompt, which is as follows:

Be it remembered, that, on the 23d day of January, A.D. 1855, application was made to me by Norman H. Purple, upon his affidavit, stating that he was attorney for the plaintiff, in a suit then depending in the Circuit Court of the United States for the Circuit and District of Illinois, wherein Edward P. Tesson was plaintiff, and Richard Gregg defendant; and that the testimony of Isadore Lecompte and Louis Lecompte was material and necessary for the said plaintiff, in the prosecution of said suit, and that they, the said witnesses, lived at Cahokia, in St. Clair county, more than one hundred miles from Chicago, where the court at which the said plaintiff expected the said cause would be tried, was appointed by law to be held; that Richard Gregg, the said defendant, and Charles Ballance, his attorney, resided at Peoria, Illinois, about one hundred and sixty miles from Cahokia aforesaid, and I was requested, on the behalf of the said plaintiff, that the said Isadore Lecompt and Louis Lecompt might be examined according to the directions of the act of Congress, in such case made and provided.

Whereupon, I ordered that the said Isadore Lecompte and Louis Lecompte should be examined before me de bene esse, at Cahokia, in the county of St. Clair, in the State of Illinois, on the 23d day of January, A.D. 1855, at two o'clock in the afternoon of said day. And the said Isadore Lecompt and Louis Lecompte appearing before me, at Cahokia aforesaid, on this 23d day of January A.D. 1855, I have therefore proceeded with the said examination.

And the said Isadore Lecompt, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith: That he is sixty-six years of age; that he was born in Cahokia, St. Clair County, Ill., where he has resided up to this time, with the exception of some six years, at different times, from the years 1812 up to 1820, at which time he was a ranger in the United States service, in this State, and some part of said time employed as a voyageur for certain Indian traders then stationed on the Illinois river.

That he was well acquainted with Antoine and Simon Roi; that they were brothers, and both resided in the village of Peoria, situated on the Illinois river, about the above date; that they were both married, and had families while there; that they, Antoine and Simon Roi, both removed to this country shortly after that date.

That Antoine Roi died in St. Clair county. Left a widow and three children. That Simon Roi wife died shortly after the death of Antoine Roi (with whom said Simon Roi had two children). Simon Roi then married the widow of his brother Antoine Roi.

That two of the children of said Antoine Roi died, and that one is yet living, and residing in St. Clair county, Ill. Her name is Mary, now wife of Touissind Gendron; and that both Antoine and Simon Roi have been dead over twenty years, and left neither father or mother, brother or sister, or descendants of any brother or sisters.

That since the death of said Antoine and Simon, and the wife of Simon, who was the widow of his brother Antoine, all of the children of said Simon have died, and all the children of said Antoine, except said Mary Gendron, daughter of said Antoine Roi; and that all of said children have been dead over ten years. And that there is not now, and has not been for more than ten years, any other living descendants or relations of said Antoine and Simon Roi, except said Mary Gendron, who is daughter of Antoine Roy, dec'd.

his
ISADORE ⋈ LE COMPT.
mark.

Subscribed and sworn to, before me, this 23d January, A.D. 1855.
NARCISSE PENSONEAU,
Notary Public, St. Clair Co., Ills.

And I further certify, that the foregoing deposition was reduced to writing by me, and signed by Isadore Lecompte, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand and official seal, at the county of St. Clair, [SEAL.] aforesaid, this 23d day of January, A. D. 1855.
NARCISSE PENSONEAU,
Notary Public, St. Clair County, Ills.

14. Plaintiff offered in evidence a power of attorney from Gendron and wife to Pensoneau, which is as follows:

Power of Attorney from Mrs. Gendron and Husband.

28th June, 1849.

Know all men by these presents, that we, Toussan Gendron, and Maria Gendron, formerly Maria Roi (daughter of Antoine Roi, deceased), do hereby constitute and appoint Narcisse Pensoneau, of the county of St. Clair, and State of Illinois, our true and lawful attorney, for us, and in our names, to sue and recover, demand and enter upon, sell, lease, let and dispose of, as he may deem best, all and every interest derived to us as heirs at law of Antoine Roi, to attend in all matters and things, causing the same as if the same was done

by us in person, restricting our said attorney to the following property, of which Antoine Roi dec'd seized of, in the town of Peoria, in the county of Peoria, State of Illinois, the description of which will more fully appear by report of Edward Coles, register of the land office at Edwardsville, Illinois, to the secretary of the treasury, on the 20th day of November, A.D. 1820, and in obedience to the act of Congress, approved the 15th May, A. D. 1820, as lots No. 33 (thirty-three), and which said lot the said Roy was entitled by virtue of the confirmatory act of Congress, approved the 3d day of March, A.D. 1823, and hereby ratifying and confirming all and every act of our said attorney, in the disposition of whatsoever kind the same may be, in the above premises. In testimony whereof, we have hereunto set our names and seals, this 3d day of March, A.D. 1849.

TOUSSANT GENDRON. [SEAL.]

her
MARY ⋈ GENDRON. [SEAL.]
mark.

Done in presence of
FRANCIS LA CROIX.

State of Illinois, County of St. Clair, *ss.*

I, Francis Lacroix, acting justice of the peace of said county, do certify, that Toussaint Gendron, and Mary, his wife, whose signatures appears to the foregoing instrument of writing, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they had executed the said powers of conveyance for the uses and purposes therein mentioned; and the said Mary Gendron, having been by me made acquainted with the contents of the said power of conveyance, and examined separate and apart from her said husband, did acknowledge that she executed the same, freely, voluntarily, and without compulsion of her said husband, and does not wish to retract. Given under my hand and seal, this fifth day of March, A.D. 1849.

FRANCIS LA CROIX, [SEAL.]
Justice of the Peace.

State of Illinois, County of St. Clair.

I, William McClintock, clerk of the County Commissioners' Court, of the county aforesaid, do certify, that Francis La Croix, whose signature appears to the foregoing certificate of acknowledgment, or instrument of writing, was, at the time of signing the same, namely, the 5th day of March, 1849, an acting justice of the peace within and for the said county of St. Clair, regularly commissioned and qualified, and as such, full faith and credit ought to be given to all his official acts. In witnesss whereof, I have subscribed my name

and affixed the seal of the aforesaid court, at office, in Belleville, this 17th day of April, A.D. 1849.

WM. McCLINTOCK, [SEAL.]
Clerk C. C. C. St. C. C.

State of Illinois, Peoria County, *ss.*

I, Jacob Gale, clerk of the Circuit Court, and ex-officio recorder of the County of Peoria, in the State of Illinois, do hereby certify, that the foregoing is a full and correct copy from the records of a deed and of the certificates thereto, as the same stand recorded, on pages 224 and 225, in Book V., in said recorder's office.

In witness, whereof, I hereto set my hand and affix the seal of said court, at my office, in Peoria, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-three.

JACOB GALE, [SEAL.]
Clerk and Recorder.

15th. A deed from Pensoneau, as the attorney of Gendron and wife, to Tesson and Rankin, which is as follows:

Deed from Gendron and wife.

June 28th, 1849.

This deed, made this 20th day of June, A.D. 1849, witnesseth, that Tousant Gendron, and Mary Gendron, his wife (who claims to be the heirs of Antoine Roi, dec'd, and only heirs of said dec'd), by their attorney in fact, Narcisse Pensoneau, of the county of St, Clair, State of Illinois, have, for and in consideration of the sum of fifty dollars, to them in hand paid, by Edward P. Tesson, of the city of St. Louis, State of Missouri, and John Rankin, of the town of Peoria, and county of Peoria, in the State of Illinois, the receipt of which is hereby acknowledged, doth grant, bargain and sell, convey and confirm, unto the said Teson and Rankin, their heirs and assigns, forever, all the right, title, and interest, of the said named parties, claiming the same as the heirs of said Antoine Roi, dec'd, in and to a certain lot or tract of land, lying and being situated in the French part of the town of Peoria, county of Peoria,

which lot is supposed to contain above one-half acres of land, which is more particularly described in Edward Coles register's report, dated at Edwardsville, Illinois, the 20th November, A.D. 1820, to the secretary of the treasury, which was made in conformity to act of Congress, passed and approved the 23d day of March, 1820 (said lot more particularly described in Brown's survey and plat, as lot No. 33, thirty-three. To have and to hold the aforesaid lot, together with all and singular the privileges and appurtenances thereunto belonging, or in anywise appertaining, unto the said Tesson and Rankin, their heirs and assigns, forever. And the

said party of the first part do covenant, on their part, to warrant any claim or demand whatsoever, claimed through or under them, but none other. In witness whereof, the said parties of the first part, by their attorney in fact, Narcisse Pensoneau, has hereunto set their hands and seals, the day and year first above written.

TOUSAINT GENDRON. [L. S.]
MARY GENDRON. [L. S.]
By their attorney, NARCISSE PENSONEAU.

State of Illinois, County of Peoria, *ss.*

I, William McClintock, clerk of the County Commissioners' Court, of the county aforesaid, do certify, that Narcisse Pensoneau, whose signature appears to the foregoing deed as having executed the same, and who is personally known to me to be the person described in and who executed the aforesaid deed, this day personally appeared before me, and acknowledged that he executed the said conveyance, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court, at office, in Belleville, this 20th day of June, A.D. 1849.

WM. McCLINTOCK, [SEAL.]
Clerk C. C. C. St. C. C.

State of Illinois, Peoria County, *ss.*

I, Jacob Gale, clerk of the Circuit Court, and *ex-officio* recorder of the county of Peoria, in the State of Illinois, do hereby certify, that the foregoing is a full and correct copy from the records of a deed and of the certificates of acknowledgment thereof, as the same stand recorded on pages 225 and 226, in book V., in said recoder's office. In testimony whereof, I have hereto set my hand and affixed the seal of said court, at my office, in Peoria, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-three.

[SEAL.] JACOB GALE,
Clerk and Recorder.

Defendant then, to maintain the issue on his part, read in evidence.

1st. He read a certificate of pre-emption, which is as follows:

Certificate of Pre-emption.

LAND OFFICE,
QUINCY, ILLINOIS, 27th April, 1836.

I, Samuel Alexander, register of said office, do hereby certify, that on the 28th day of July, 1832, Charles Ballance claimed and estab-

lished a right of pre-emption to the southwest quarter of section No. nine, township eight north of the base line, and range eight east, of the fourth principal meridian, as appears by documents on file in my office. Given from under my hand and seal, the day and year aforesaid.

SAMUEL ALEXANDER, [SEAL.]
Register.

2d. He then read a receipt, which is as follows:

Duplicate Receipt.

Pre. Act. 1834.

RECEIVER'S OFFICE,
QUINCY, ILLINOIS, 27th November, 1837.

No. 13,293.

Received, from Charles Ballance, of Peoria county, Illinois, the sum of one hundred and eighty-four dollars and twenty-eight and three-fourth cents, being in full payment for the southwest fractional quarter of section No. nine, township eight north of the base line, of range No. eight east, of the fourth principal meridian, containing one hundred and forty-seven acres and $\frac{43}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

THOS. CARLIN,
Receiver.

$184 28¾.

Indorsed: Filed, April 6th, A.D. 1854, and recorded in book G. A., page 142. Jacob Gale, recorder, P. Co.

3d. He then read in evidence a certificate of purchase, which is as follows:

Certificate of Entry.

U. S. LAND OFFICE,
QUINCY, ILLINOIS, 27th November, 1837.

I do hereby certify, that Charles Ballance, of Peoria county, in the State of Illinois, did this day enter or purchase, at this office, the southwest fractional quarter of fractional section No. 9, in township No. 8 north, of range No. 8 east, of the fourth principal meridian, containing one hundred and forty-seven and $\frac{43}{100}$ acres. Certificate No. 13,293, as appears of record in this office.

SAMUEL LEECH,
Register.

Indorsed: Filed, April 6th, A.D. 1854, and recorded in G. A., page 142. Jacob Gale, recorder, P. Co.

4th. He read a deposition of Aquilla Moffatt, which is as follows:

Deposition of A. Moffatt.

United States of America, Northern District of Illinois, *ss.*

Be it remembered, that on the 5th day of June, A.D. 1855, Charles Ballance personally appeared before me, George S. Blakely, a notary public, duly appointed and qualified, and acting as such, in the county of Peoria and State of Illinois, and made oath to the truth of the annexed affidavit, and subscribed his name to the same, in my presence, and filed it with me, and thereupon requested me to take the deposition of said Moffatt, to be read on behalf of said defendant in said action of ejectment, whereupon I ordered that said Purple should be notified, that on the eleventh day of June, A.D. 1855, between the hours of nine o'clock A.M. and six o'clock P.M. of said day, said deposition would be taken, before me, at the office of Johnson and Bakely, in the city of Peoria. Which notice was accordingly given to said Purple. And afterwards, to wit, on the day and year last aforesaid, between the hours aforesaid, said witness being produced before me, and being first duly sworn to speak the truth, the whole truth, and nothing but the truth, so far as he should be interrogated, answered as follows to the following interrogatories, that is to say:

Interrogatory 1st. What is your age, and where do you reside?

Ans. My age is fifty-three years. I have resided three miles below Peoria.

2d. How long have you resided that near Peoria, and have you been all that time acquainted in and about Peoria?

Ans. I have resided there since 1830, and have been acquainted in and about Peoria since the year 1822.

Question 3d. Are you acquainted with Charles Ballance, and if yes, how long have you known him?

Ans. I am acquainted with him, and have known him since the spring of 1832.

Ques. 4th. What do you know, if anything, with regard to the possession of the southwest fractional quarter of section nine, in township eight north, of range eight east, of the fourth principal meridian, by said Charles Ballance?

Ans. I knew of said Charles Ballance being in possession of said land, in the summer of 1832, and has cultivated a portion of it ever since that time. He has had forty acres under cultivation for years, for ten years, at least.

Ques. 5th. State, if you know, where said Ballance has resided since you have known him, and whether he is single or has a family, and whether he has been a housekeeper.

Ans. When I first knew him he was a single man. In the year 1834, as I recollect, he brought his sister here, who kept house for him afterwards in a yellow frame house near the Illinois river, on another fraction of the same section, and lived there until he moved where he now lives, which is about ten or twelve years since, and has lived there since. His present residence is on southwest quarter of section nine, in same township.

Ques. 6th. When you came to Peoria, could you or not trace out the improvements of the ancient French inhabitants, by their cellars, remains of chimneys, &c., or had they all disappeared?

Ans. When I came to Peoria they were plain to be seen.

Ques. 7th. State, if you please, whether any of their houses were situated further down the river than the avenue reaching from said Ballance's house to the river, called Ballance's avenue, or were they all above said avenue?

Ans. Some of them were further down than that.

AQUILLA MOFFATT.

And I further certify that the preceding deposition was reduced to writing by me, and signed by the said Aquila Moffatt, in my presence, and that I am not of counsel or attorney for either of said parties, and have no interest in the event of said suit.

[SEAL.] GEORGE S. BLAKELEY,
Notary Public.

5th. He read a deposition of Almiron S. Cole, which is as follows:

Deposition of A. S. Cole.

Question 1st. Do you know Charles Ballance? if yes, how long have you known him?

Answer. I do know him, and have known him for seventeen or eighteen years.

Ques. 2d. Where did said Ballance live when you first knew him, and where has he lived ever since?

Ans. He lived in town of Peoria, and county of Peoria, and State of Illinois, and lives there now. He resided, the first year that I knew him, near Fort Clark, in said town. He resided there until the year 1844, when he moved to where he now resides, on the southwest quarter of section nine, in township eight north, range eight east, in said county.

Ques. 3d. What do you know (if anything) respecting said Ballance's possession of said southwest quarter before he commenced residing thereon?

Ans. I knew of said Ballance cultivating a portion of said land every year, from the time that I came to the country up to the pre-

sent time, or previous to the year 1844. He built a house on said land, which he now resides in.

Ques. 4th. Did you ever improve any portion of said tract under a lease from said Ballance? If yes, state what part, when, and in what manner you occupied it?

Ans. Under a lease of ten years, with privilege of renewal, I enclosed two hundred feet on railroad running to Illinois river, being lot three, in block forty-seven, in Ballance's addition to Peoria, and put a distillery and other improvements on it, which I afterwards sold to Sylvanus Thompson, and now occupied by Richard Gregg, son-in-law to said Thompson, and his administrators. I also enclosed, under another lease, a tract on the lower side and adjoining same piece, and running from railroad to said river, including part of block sixty-seven and sixty-eight. Said Thompson occupied said land at the time of his decease, and that said Gregg acted with said Thompson up to the time of his decease, and that said Gregg has occupied said land since the decease of said Thompson.

A. S. COLE.

6th. He read a deposition of Isadore Lecompt, which is as follows:

Deposition of Isadore Lecompt.

Question 1st. How many wives had Antoine Roi, and what were their names?

Answer. He had two wives: the first was, I believe, Josette Livernore, and the other was Louise Myet.

Ques. 2d. How many children had he by each of his wives, and what were their names respectively?

Ans. I think he had three children by his first wife, namely, a boy named Ambrose, another boy named Antoine, and a girl, afterwards married to Balthazar Latour. By his second wife he had a daughter named Maria.

Ques. 3d. Did you know a son of said Antoine that was named Ambrose? If yes, do you know of his being married to any one, and to whom?

Ans. I knew Ambrose well; he lived with me, and I know that he was married to a Margaret Laverdeur.

Ques. 4th. Did you ever know Paul Delonchamps (called by the French Polyte, properly Hypolite)? If yes, was he not married to a daughter of Simon Roi?

Ans. I knew him, and I know that he was married to a daughter of Simon Roi.

Ques. 5th. Do you not know that after said Delongchamps lost his first wife, he married a Miss Chatrand?

Ans. I know that after the death of his first wife, he married a Susan Chartrand.

Ques. 6th. Do you not know that he had children by by both said wives? If you say yes, give their names.

Ans. I know he had children (one or two) with his first wife, but do not recollect their names; I don't recollect that he had children by his second wife.

Ques. 7. Did you not swear, in a deposition taken by John Winstanly, a justice of the peace, that Louis Latour was a grandson of said Antoine Roi, and is not that the truth?

Ans. I believe I did state so, and I believe it to be the truth.

Ques. 8th. Do you know of any other matter or thing that would be of use to either party in the above-entitled cause?

Ans. I believe I do not.

his
ISADORE ⋈ LECOMPT.
mark.

I certify that the preceding deposition was reduced to writing by me, and signed with his mark, after reading the same to him, by the said Isadore Lecompt; that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

In testimony whereof, I have hereunto set my name and affixed my notarial seal, this 15th day of September, A.D. 1855.

THEODORE M. WALSH, [SEAL.]
Notary Public.

7th. He read a deposition of Mrs. Glodon, which is as follows:

Mrs. Glodon's Deposition.

Be it remembered, that on the first day of November, 1854, at o'clock of said day, at my office, in St. Clair county, Illinois, Charles Ballance personally appeared before me, Theodore M. Walsh, a justice of the peace, and also a notary public, in and for said county, and made oath that the said Charles Ballance was virtually the defendant in a suit then pending in the Circuit Court of the United States for the State and district of Illinois, wherein Edward P. Tesson was plaintiff and Richard Gregg was defendant, said Richard Gregg being his (Ballance's) tenant; that the testimony of Madaline Glodon and Touissant Gendron was material and necessary for him, the said Ballance, in the defence of said suit, and that the said Madaline Glodon and Touissant Gendron lived in St. Clair county, in the State of Illinois, more than one hundred miles from Chicago, where the court at which he, the said defendant, expected the said cause to be tried, was appointed by law to be held; that the said Edward P. Tesson, the above-named plaintiff, resided out of the State of Illinois, more than two hundred miles from the said place where said cause is

expected to be tried. And the said Norman H. Purple, the attorney of said Edward P. Tesson, lives at Peoria, about one hundred and seventy miles from said St. Clair county. And the said Charles Ballance requested me that the said Madaline Glodon and Touissaint Gendron might be examined, according to the act of Congress in such case made and provided.

Wherefore I ordered that the said Madaline Glodon and Touissant Gendron should be examined *de bene esse*, before me,—the said Madaline, at her house in St. Clair county, and the said Tousant at Cantine village, in said county and State.

The said Charles Ballance appearing before me at the times and places aforesaid, I have proceeded with the said examination.

And the said Madaline Glodon, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith:

Int. Did you or not ever live in Peoria, in the State of Illinois? and if yea, when?

Ans. I lived in Peoria for sixteen years, up to the year A.D. 1812.

Int. Did you or not know Simon Roi and Antoine Roi there?

Ans. Yes.

Int. Did you or not know that Antoine Roi was married? and if yes, state how often, and the names of his wife or wives.

Ans. I know that Antoine Roi was married twice; firstly to Miss Levarnois and subsequently to Miss Myett.

Int. Had he or not any children by his first wife? and if yes, what was their names?

Ans. I know that he had two children by his first wife, but do not remember their names, but know that one of them was a daughter, and married a man named Latour.

Int. Do you or not know that he had children by his second wife? and if yes, how many?

Ans. I don't know.

Int. Do you or not know when Antoine Roi died?

Ans. I know he died at Illinoistown, but don't recollect when; but think he died about eighteen or twenty years ago.

Int. Do you or not know how many wives Simon Roi had, if any, and what were their names?

Ans. I know that he had been married twice; firstly to Margaruite Ledoux, and afterwards to Mrs. (widow) of Antoine Roi.

Int. How many children had he by his first wife, and what were their names?

Ans. Two. A son named Simon, and a daughter named Margaruite.

Int. State if the said Margurite was ever married; and if so, to whom.

Ans. She was married to Paul Delongschamps.

Int. Had she or not any children with said Delongschamps?

Ans. I heard that she had two, but never saw them.

Int. How many children had he, the said Simon, by his second wife?

Ans. Shortly after his marriage with his second wife, she (the second wife) had a child, but I don't know whose it was.

Int. How long after Antoine's death until Simon married his widow?

Ans. About fifteen days.

Int. Do you or not know that she had been in the habit of living with Simon Roi during Antoine's lifetime?

Ans. I know that she lived with both alternately.

Int. How long after Antoine Roi's death until this child was born?

Ans. About three months.

Int. Do you or not know Mary Gendron?

Ans. I know her from her childhood.

Int. Were you present at the time when Antoine Roi was married to her mother?

Ans. Yes.

Int. How old was she (Mary Gendron) when said Roi and her mother were married?

Ans. About three or four months.

Int. Had she (the said Mary's mother) the reputation of indulging other men, and living with them, before said marriage?

Ans. She had such reputation.

Int. State whether Simon or his daughter, Margaret Delongschamps, died first.

Ans. Simon Roi died first.

her
MADELINE ⋈ GLODON.
mark.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said Magdaline Glodon; and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

In witness whereof, I have hereunto set my name, and affixed my notarial seal, at the county aforesaid, this 1st day of November, A.D. 1854.

[SEAL.]

THEODORE M. WALSH,
Justice of the Peace and Notary Public.

8th. He read a deposition of Mrs. Gendron, which is as follows:

Mrs. Gendron's Deposition.

Question 1st. Were you ever acquainted with Simon Roi, who, previously to 1812, lived in Peoria? If yes, when did you know

him? and what means had you of being intimately acquainted with him and his family.

Answer. I knew him well. He was my stepfather. I lived with him until I was married, about twenty-six years since; and he lived with me until he died afterwards, about 24 years since.

Ques. 2d. Was said Roi ever married? If yes, how often was he married? and what were the names of his wife, or the names of his wives, if he had more than one?

Ans. He was married twice. His first wife was Margaret; her surname I don't recollect. His second wife was Louise Myett, my mother.

Ques. 3d. If, in answer to the last above interrogatory, you said Roi was married, state whether he had any children? and if yes, give their names; and if he had children by more than one wife, give the names of those by each wife?

Ans. He had two children by his first wife, named Simon and Margaret. Simon died unmarried and without issue, and Margaret married Paulette Delongchamps. Margaret had children, but she survived them, and her husband survived her. He had four children with his second wife; all died young and before him, except one, viz., Angelique, who survived him. None of the said four last children left any issue.

Ques. 4th. If you state that said Roi had children, state whether any of them ever married? and if yes, to whom were they severally married?

Ans. One only of his children was married, that is Margaret, who was married to Paulett Delongchamps.

Ques. 5th. If you state that any of the children of said Roi were ever married, please state whether any of them had children? and if yes, which of them, and what were their names?

Ans. No children survived them; that is, the children of said Simon Roi had no children who survived them, to my knowledge.

Ques. 6th. Do you know any other matter or thing that would be of benefit to either of the above parties?

Ans. I don't suppose I know any other matter that would be of any other benefit to the parties or either of them.

her
MARY ✕ GENDRON.
mark.

State of Illinois, St. Clair County, *ss.*

I, T. M. Walsh, a notary public, commissioned and qualified and acting as such, in the county and State aforesaid, do hereby certify, that, it appearing to my satisfaction that the facts stated in the annexed affidavit, this day filed with me, are true, I ordered the deposition of said Mary Gendron to be taken upon the within and annexed

interrogatories. And that said witness, being duly sworn according to law, answered the above interrogatories one by one, in the order in which they stand; and that her answers were carefully committed to writing by me; and that I have no interest in the matter in controversy in the above-entitled cause, nor am I attorney nor of counsel for either of said parties.

Witness my hand and seal notarial, this 28th day of June, A.D. 1855.

THEODORE M. WALSH,
Notary Public for St. Clair Co., Ills.

9th. He then read the deposition of Mr. Walsh, which is as follows:

In the Circuit Court of the United States for the Northern District of Illinois.

EDWARD P. TESSON
v.
RICHARD GREGG. } In Ejectment.

Deposition of Mr. Walsh.

The deposition of T. M. Walsh, taken before me, commissioner of the United States for the State of Illinois, by agreement of parties, at the residence of said witness, in the town of Cahokia, in the county of St. Clair and State of Illinois, on this 25th day of June, A.D. 1855.

T. M. Walsh, being first duly sworn, deposes, and in answer to the interrogatories propounded to him as follows, to wit:

Interrogatory 1st. Do you hold any office of honor or profit under the authority of the State of Illinois? If yes, what?

Answer. I hold the office of notary public and justice of the peace for the county of St. Clair County, in said State.

Int. 2d. Did or not Charles Ballance, at any time, make an effort to take the deposition of Francois Noise before you as notary public? If yes, state whether it was done? and what passed between said Ballance and said Noise on that occasion?

Ans. I recollect that in the fall of 1854, Francois Noise was called before me to testify in this case. I believe he stated that he wanted ten dollars before he would give his deposition, stating at the same time that he was paid twenty dollars by the opposite party; and said, he was oftentimes paid more by others. Ballance refusing to give him ten dollars; he refused to give his deposition.

The above question and answer objected to.

Int. 3d. Where does Mr. Noise live?

Ans. He lives in Cahokia, in St. Clair County, Illinois.

Int. 4th. Does Mr. Noise follow any other business for a livelihood than as a witness?

Ans. Mr. Noise tells me that he is frequently in St. Louis attending the Land Courts and other courts, as a witness. I know of no other business he has.

Ques. 5th. State whether or not, on the occasion referred to in the second interrogatory, said Noise said that he had on one occasion been paid one hundred and fifty dollars by one party, and fifty dollars by the other party, as witness. If not, state, as well as you can recollect, what he stated on that subject.

Ans. I recollect that he made statements somewhat similar to those stated in this interrogatory; but do not recollect precisely the amounts he stated that he had received, but think they were near the amounts above stated.

Cross-examination.

Interrogatory 1st. What is your age?
Answer. My age is over twenty-seven years.
Int. 2d. What is your place of nativity?
Ans. Ireland.
Int. 3d. How long have you resided in Cahokia?
Ans. This is the sixth year.
Int. 4th. What is your mother tongue?
Ans. English.

Re-examination resumed.

Int. 1st. Do you or not understand the French language?
Objected to.
Ans. Yes. I believe so.
Int. 2d. State whether or not the French language was the mother tongue of your wife?
Objected to.
Ans. Yes, it was.

T. M. WALSH.

I, A. L. Merriman, commissioner of the United States, within and for the State of Illinois, do hereby certify, that on this day, at the residence of T. M. Walsh, in the town of Cahokia, in the county of St. Clair, in the State of Illinois, the foregoing deposition was taken, subscribed, and sworn to before me, by the above-named deponent.

In testimony whereof, I have hereunto set my hand and seal, this 25th day of July, A.D. 1855.

A. L. MERRIMAN,
U. S. Commissioner for Illinois.

10th. He read the deposition of Aspasia Johnson.

In the Circuit Court of the United States, for the Northern District of Illinois, of the December Term, 1855.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

List of interrogatories, to be propounded to Etienne Delill, Socia Delill, Aspasia Johnson, and Mary Lafaine, on behalf of defendant.

Interrogatories to Aspasia Johnson and others.

1st. State how long you have resided, if ever, in the village of Portage des Sioux, and its immediate vicinity?

2d. Did you ever know two brothers by the name of Simon Roi, and Antoine Roi, to live at Portage des Sioux? if yes, about what time did you know them there? and where did they come from? when they came there? and where did they go to when they left there?

3d. Had said Antoine a wife when he came there? and what became of her? If he had said wife when he came there, had she any child, or children? and if yes, what was their names? if you know.

4th. Did you know a woman by the name of Maria Louise Milett, (pronounced Meyett) who resided at Portage des Sioux? if yes, state whether she was ever married to said Antoine Roi, after the death of his first wife? or did she live with him as his wife?

5th. If you say said Meyett was married to said Antoine Roi, or lived with him as a wife, state whether or not she had a daughter called Mary, before she lived with him, and before she pretended to be his wife?

6th. Do you know where said Mary now lives? and to whom she is married? if yes, state.

7th. State, if you know, who was the father of said child Mary, the daughter of said Miss Meyett?

8th. If you do not know positively, who was the father of said child, state (if you know) who was its reputed father?

9th. Do you or not know that one Louis Roi, and not Antoine Roi, was her father?

10th. If you say you do not know that said Louis Roi was the father of said Mary, do you or not know that said Louis was reputed to be her father?

11th. Did you or not ever hear either said Antoine, Louis, or said Miss Meyett, allege, or pretend, before said Meyett went to live with said Antoine, that he, said Antoine, was the father of said child? or deny that said Louis was her father?

12th. Do you or do you not know that said Louis *procured* said

Antoine, after said child was born, to marry the mother and adopt the child, to release him, the said Louis, and said Miss Mayett from disgrace?

13th. If you say you do not *know* that fact, was it or not currently reported to be the fact throughout the neighborhood?

14th. Did you or not ever hear either of said parties deny said charge?

15th. What was the character (if you know) of said Miss Meyett, for chastity and virtue?

16. Did or did not said Miss Meyett live with said Louis Roi, and not with said Antoine Roi, at the time of the birth of said child? and for more than nine months previously thereto?

17th. Did or did not said Louis Roi, Antoine Roi, and Miss Meyette, know that it was currently reported in said neighborhood, that said Louis was the father of said child? and that said Louis procured said Antoine to marry said Miss Mayett, and adopt said child?

18th. If you say you do not know that they knew said facts, were they or not so currently reported, and so much talked about, that they could not well have avoided knowing that such reports were current?

19th. Was your acquaintance with said parties and the people in said neighborhood sufficiently intimate at that time, to enable you to speak knowingly on the subject?

20th. Do you know any other matter or thing that would be of any advantage to either of the parties aforesaid? if so, state it.

C. BALLANCE,
Attorney for Defendant.

In the Circuit Court of the United States for the Northern District of Illinois.

EDWARD P. TESSON
v.
RICHARD GREGG.

Cross-interrogatories, to be propounded to Etienne Delill, Socia Delill, Aspasia Johnson, Mary Lafaine, in the above cause.

1st. Do you not know that the mother of Mary Gendron and Antoine Roi lived and cohabited together as husband and wife at Portage des Sioux, and that said Mary lived with them then, and was reputed to be their daughter, and was called so by them? Have you not often heard them call her their daughter, and her call them father and mother?

2d. Do you not know that the mother of Mary and said Antoine Roi lived and cohabited together as husband and wife in St. Clair County, Illinois, and that said Mary Gendron lived with them there,

and was reputed, known and acknowledged to be their daughter, both by them and by their neighbors and acquaintances generally?

3. What is your age and occupation?

N. H. PURPLE,
Plaintiff's Attorney.

Aspasia Johnson's Deposition.

United States of America, Northern District of Illinois, *ss.*

EDWARD P. TESSON
v.
RICHARD GREGG.

The deposition of Aspasia Johnson, taken at the office of Henry Leseur, in the village of Portage des Sioux, in the county of St. Charles, at two o'clock on the 19th day of December, 1855, taken pursuant to the annexed commission and interrogatories. Said Aspasia Johnson being produced before me, at the time and place aforesaid, and having been by me sworn true answers to make, and the whole truth, and nothing but the truth, to speak, in answer to all the annexed interrogatories, answered as follows, to wit:

In answer to interrogatory No. 1, she says: Ever since I can remember.

In answer to question No. 2, she answers as follows: I knew two men here by the name of Simon Roy and Antoine Roy, I believe about or before 1815, or after; I do not know where they went to when they left here. I understood that they came from Peoria.

In answer to question No. 3, she says as follows: I know that he was a housekeeper; but I was not acquainted with his family.

In answer to question No. 4, she says as follows: I knew Miss Millet, but I do not know whether she was married to Antoine Roy or lived with him.

In answer to question No. 5, she says as follows: I know that she had a daughter while she lived with her sister, the wife of Louison Roy, and before she was married to anybody.

In answer to interrogatories No. 6, she says as follows: I do not know.

In answer to interrogatory No. 7, she says as follows: I do not know.

In answer to interrogatory No. 8, she says as follows: I do not know. She lived with Louis Roy and his wife, and some persons suspected him to be the father of the child.

In answer to interrogatory No. 9, she says as follows: I do not know.

In answer to interrogatory No. 10, she says as follows: I know that some persons suspected him.

In answer to interrogatory No. 11, she says as follows: I have no recollection of it.

In answer to interrogatory No. 12, she says as follows: I do not know.

In answer to interrogatory No. 13, she says as follows: I do not recollect.

In answer to interrogatory No. 14, she says as follows: I do not recollect.

In answer to interrogatory No. 15, she says as follows: She bore a good character until she had her child.

In answer to interrogatory No. 16, she says as follows: She lived with her sister, and her sister's husband, Louis Roy, when the child was born, and for years before.

In answer to interrogatory No. 17, she says as follows: I do not know.

In answer to interrogatory No. 18, she says as follows: I do not recollect.

In answer to interrogatory No. 19, she says as follows: I was acquainted with Miss Millet before the occurrence took place, but not after.

In answer to interrogatory No. 20, she says as follows: I do not know.

In answer to the 1st cross-interrogatory, propounded by N. H. Purple, plaintiff's attorney, and hereto attached, she answered:

I do not know, and never knew the parties after they left here. I was never acquainted with Miss Millet after she had her child.

In answer to the 2d cross-interrogatory, she says: I never knew them there.

In answer to the 3d cross-interrogatory, she says: I was born the 30th January, 1800. My occupation is to sew, and raise my family.

And further deponent saith not.

ASPASIA JOHNSON.

11th. He then read the deposition of Mary Lafaine, which is as follows:

Deposition of Mary Lafaine.

Also, the deposition of Mary Lafaine, taken at the same time and place, to be read in the same cause, said Mary Lafaine being produced before me, at the time and place aforesaid, and being by me sworn true answers to make, and the whole truth and nothing but the truth to speak, in answer to all the annexed interrogatories, answered as follows, to wit:

In answer to interrogatory No. 1, she says: I believe over fifty years.

In answer to interrogatory No. 2, she says, as follows: I knew them, I think, thirty or more years ago, perhaps forty. I believe they came from Peoria. I do not know where they went to after they left here.

In answer to interrogatory No. 3, she says: I do not know whether he had a wife or children. I believe he kept house in this village.

In answer to question No. 4, she says: I knew Miss Millet by reputation, but not personally.

In answer to question No. 5, she says: I heard that she had a child before she was married with Roy; but I do not know personally that she had the child, or that she was married.

In answer to question No. 6, she says: I do not know.

In answer to question No. 7, she says: I do not know.

In answer to question No. 8, she says: Many persons thought it was Louis Roy who was the father.

In answer to question No. 9, she says: I heard that persons said that Louis Roy was the father, but do not know.

In answer to question No. 10, she says: I heard it said that Louis Roy was the father.

In answer to question No. 11, she says: I never did.

In answer to question No. 12, she says: I do not know.

In answer to question No. 13, she says: I heard so at the time, but I believe it was not generally believed.

In answer to question No. 14, she says: No.

In answer to question No. 15, she says: I know nothing of her reputation, besides her having a child, which I heard.

In answer to question No. 16, she says: I do not know where she lived.

In answer to question No. 17, she says: I do not know.

In answer to question No. 18, she says: I do not know.

In answer to question No. 19, she says: I did not know the woman; the men I knew by sight, but had no acquaintance with them.

In answer to question No. 20, she says: It was a common neighborhood talk, that when Antoine Roy was married, it was with Miss Millet; that he carried the child in his arms to legitimise it.

In answer to 1st cross-interrogatory, propounded by N. H. Purple, plaintiff's attorney, and hereto attached *attached*, she answered: I do not know.

In answer to 2d cross-interrogatory propounded, she says: I do not know.

In answer to 3d cross-interrogatory, she says: I will be sixty-six the 11th of next February. My occupation is to take care of my family.

Further deponent saith not.

her
MARY ✕ LEFAINE.
mark.

12th. He then read the deposition of Etienne Delill, which is as follows:

Delill's Deposition.

Also, the deposition Etienne Delill, taken at the same time and place, to be read in the same case; said Etienne Delill being produced before me, at the time and place aforesaid, and being by me sworn true answers to make, and the whole truth, and nothing but the truth, to speak, in answer to all the annexed interrogatories, answered as follows, to wit:

In answer to interrogatory No. 1, he says: I lived here since 1814.

In answer to interrogatory No. 2, he says: Yes, they were residing here when I came here. My impression was that they were Canadians, but came from Peoria here. I heard that they went to Kahokia from here.

In answer to interrogatory No, 3, he says: Antoine Roy had a wife when I first knew him. She died here. She had two children by him, two boys. One was named Ambrose. The other I do not know his name: he was nick-named Cat's eye, because of his having a defect in one eye.

In answer to interrogatory No. 4, he says: I knew Maria Louise Millet, who resided here. I heard it said, at the time, that she was married to Antoine Roy, after the death of his first wife. She lived with him as his wife, and they went away together.

In answer to interrogatory No. 5, he says: I heard, at the time that she had a child, before she got married with Antoine Roy; shortly after, as soon as she got well, that she got married with Roy; I do not know exactly how long, but I think, not over three months.

In answer to interrogatory No. 6, he says:

I heard that she married Toussaint Gendron, but do not know it of my own knowledge.

In answer to interrogatory No. 7, he says:

I do not know.

In answer to interrogatory No. 8, he says:

I do not know.

In answer to interrogatory No. 9, he says:

I do not know.

In answer to interrogatory No. 10, he says:

There were persons who said so at the time, but I cannot say that it was general.

In answer to interrogatory No. 11, he says:

I never did. I did not frequently see them, except at church.

In answer to interrogatory No. 12, he says:

I do not know.

In answer to interrogatory No. 13, he says:

I heard it at the time, but cannot say that it was general.

In answer to interrogatory No. 14, he says:

I did not.

In answer to interrogatory No. 15, he says:

I never knew anything wrong in her character, except having that child, either before or after.

In answer to question No. 16, he says:

She lived with her sister and her brother-in-law Louis Roy, several years before the birth of the child, and was living with them at the time.

In answer to question No 17, he says:

I do not know.

In answer to question No. 18, he says:

As far as I know, they may have been ignorant of it.

In answer to question No. 19, he says:

I cannot tell.

In answer to question No. 20, he says:

I do not know anything that may be of benefit to either party.

In answer to 1st cross-interrogatory, propounded by N. H. Purple, plaintiff's attorney, and hereto attached, he answered:

When they left here, the child was very young, and not able to speak. I was not enough with them to know that they called it their child.

In answer to 2d cross-interrogatory, he says:

I did not know them after they left here.

In answer to 3d cross-interrogatory, he says:

I am 70 years old the 1st of next month. I am a miller, or do any other work to make a living.

Further deponent saith not.

his
ETIENNE ✕ DELILLE.
mark.

State of Missouri, St. Charles County, *ss.*

I, Henry Lesieur, a justice of said county, and commissioner of the United States to take the above depositions, by the annexed commission for that purpose appointed, do hereby certify that the foregoing depositions were by me taken at the time and place aforesaid, and that said witnesses were by me severally sworn as aforesaid, and subscribed their names to said depositions severally, in my presence. I further certify, that each interrogatory accompanying said commission was propounded to each of said witnesses, and the answer thereto committed to writing before the following interrogatory was propounded, and that all of said answers were committed to writing by me, and that I am not of counsel to either of the parties to said suit, nor am I in anywise interested in the event of said suit. I further

certify, that I called on said Socia Delill to take her deposition, and found her in bed sick, and too unwell to give her deposition.

Witness my hand and seal, at my office in Portage des Sioux, in St. Charles County, in the State of Missouri, the date aforesaid.

HENRY LESIEUR, [SEAL.]
Justice of the Peace, and Commissioner, &c.

13th. He then read the deposition of Eliazer Vignout, which is as follows:

Vignout's Deposition.

Interrogatories to be propounded to Eleazer Vignout, a witness to be examined on the part of the defendant.

Question 1st. Are you, or are you not, acquainted at Cahokia, in the county of St. Clair, Ill.? If you say you are, state whether there is a Catholic church at that place; and if you state that there is a Catholic church there, state who is the officiating priest of said church.

Question 2d. If you say there is a Catholic church at that place, state whether, in said church, a record is kept of the births, deaths, marriages, and baptisms of the parishioners of said church.

Question 3d. If you say that there is such a record kept in said church, state who has the custody of said record.

Question 4th. If you say there is such a record, and that you have the custody thereof, please examine the same, and give here an exact copy of any entry that occurs therein concerning Simon Roi and his second wife, who had been a Miss Myette, but was afterwards the wife of Antoine Roi. Also give correct copies of any entries that may be found in said record respecting the births or deaths of any of said Simon Roi's children.

Cross-interrogatories.

1st. If you know anything of benefit to the plaintiff in this suit, state the same fully.

2d. Are you a priest of the Catholic church at Cahokia? If so, how long have you officiated as such at that place.?

Deposition of Eleazer Vignouet, of the county of St. Clair and State of Illinois, taken on the 18th day of June, A. D. 1856, at 12 o'clock, M., at the office of Theodore J. Krafft, commissioner, pursuant to the enclosed commission, to be read as evidence in a case pending in the Circuit Court of the United States for the Northern District of Illinois, wherein Edward P. Tesson is plaintiff, and Richard Gregg is defendant, as follows:

The said Eleazer Vignouet, being duly sworn, deposes and says as follows:

1st Question. A. I am acquainted at Cahokia, in St. Clair county, State of Illinois. There is a Catholic church at Cahokia, and I, myself, Eleazer Vignout, am the officiating priest of said church.

2d Question. A. There is a record kept at that church of the births, deaths, marriages, and baptisms of the parishioners.

3d Question. A. The priest of the church at the present time myself.

4th Question. I have examined the record, and the annexed exhibit, marked 1, is a correct copy of the marriage of Simon Roi with Miss Marie Louise Miette, who was, at the time of her marriage with Simon Roi, the widow of Antoine Roi. Exhibit No. 2 is a correct copy of the baptism of Angelique, the daughter of Simon Roi and Marie Louise Myette. Exhibit No. 3 is a correct copy of the death of Simon Roi.

Cross-interrogatories.

1st Interrogatory. A. I do not know that I know anything else of benefit to the plaintiff or defendant, besides that what I stated.

2d Int. A. I am a priest of the Catholic church at Cahokia, and have officiated there for about fourteen months.

E. VIGNOUET.

State of Illinois, St. Clair County.

I, Theodore J. Krafft, a justice of the peace of St. Clair County, State of Illinois, do hereby certify, that Eleazer Vignouet was by me carefully examined, and cautioned and sworn, to testify the whole truth in the above case, and that the foregoing deposition by him subscribed, was reduced by me to writing in the witness's presence, and taken at my office in Belleville, St. Clair County, Illinois, on the 18th day of June, A. D. 1856, at 12 o'clock, M.

Witness my hand and seal.

THEOD. J. KRAFFT, [SEAL.]
J. P.

Extract from the Registers of the Parish of Cahokia.

The 27th of May, 1827.

I, the undersigned, have given the nuptial benediction at the marriage between Simon Roi, son of Simon Roi, and Eleanore Lafranchise of one part, and Marie Louise Miette, daughter of J. B. Miette, and Mary Delanglot, married civilly five years since, I having accorded to them a dispensation for the obstacle of relationship in the second degree, in virtue of my power.

The witnesses have been Simon Bertrand and Touissaint Chartrand.

(Signed) JOSEPH ANTOINE LUTZ,
Missionary Priest.

Mark of Touissaint Chartrand, ⋈.
Mark of Simon Bertrand, ⋈.

(These two persons have satisfied their neighbors or friends, in asking pardon publicly in the church.)

A true copy.

E. VIGNOUT,
Cure.

CAHOKIA, 18th June, 1856.

Extract from the Register of the Parish of Cahokia.

The 17th April, 1831.

I, the undersigned, have baptized Angelique, born the 12th of February, of the legitimate marriage of Simon Roi and of Marie Louise Miette. The godfather and godmother were Charles Antoine Roi and Marie Louise Antoine Roy, who have not been able to sign.

(Signed) P. T. DONTELINQUE,
R. S. M.

A true copy.

VIGNOUT,
Cure.

The 28 December, 1831.

I, the undersigned, have buried in the cemetery of this parish, the body of Simon Roi, aged about fifty years, who died suddenly.

(Signed) P. T. DONTTELIQUE.

A true copy.

E. VIGNOUT.

Records from Edwardsville.

14th. He read a certified copy of the claim and affidavits filed at the land office, at Edwardsville, in 1820, as the foundation of this claim, and also the affidavit upon which the patent issued, which are as follows:

The following is a true copy, so far as relates to claims Nos. 29 and 33, of village lots in Peoria, of the report of the register of the land office at Edwardsville, Illinois, made to the secretary of the treasury of the United States, under and by virtue of the act of Congress, entitled An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois, approved May 15th, 1820, to wit:

No. 29.

Simon Roi, in right of his wife, who was the wife of the late Charles Le Doux, of Peoria, claims a lot in Peoria, containing about one half of an arpent of land, and bounded on the south by a lot of Antoine Roi, on the north by the lot of Francis Dupre, and on the east and west by streets.

Proof.

Derzy Blondeau and Jean Baptiste Blondeau testify on oath, that Charles Le Doux made an improvement on the above described lot in the year 1793, and continued to reside on and cultivate the same until his death. That the above-named Simon Roi married the widow of the said Charles Le Doux about the year 1799, and that they, the said Roi and wife, continued to reside on and cultivate the said lot until about the year 1808 or 1809, when they removed from Peoria.

(No. 33.)

Antoine Roi claims a lot in Peoria containing about one half of an arpent of land, and bounded northwardly by a lot of Charles Le Doux, eastwardly by a street separating it from the Illinois river, southwardly by unoccupied land, and westwardly by a street.

Proof.

Michael De Clare and Simon Roi testify on oath that Antoine Roi, in the year 1793 or 1794, built an house on, and cultivated as a garden, the above-described lot, which contained about one half of an arpent of land, and on which he continued to reside and cultivate for five or six years, when he abandoned it and removed from Peoria.

27 June, 1820.

To the Register of the Land Office, at Edwardsville:

Sir: Please take notice that I claim the following lots in the village of Peoria, in the State of Illinois: one lot in said village where I lived, adjoining Antoine Roi on the east and Francis Duprie on the west, and east and west by streets; also one opposite to said described lot across the street, north of the street separates the two.

One other, bounded by John Cusoll, on the west by Lewis Buso, on the south a street; each lot about half an arpen.

Also one lot of ground about six arpens north of the above-described two lots. All of which I make claim to under the act of Congress of the 15th March, 1820.

his
SIMON ⋈ ROI.
mark.
her
CECILIA ⋈ ROI.
mark.

Test,

BEN. STEPHENSON.

State of Illinois, Madison County, ss.

Jean Baptiste Blondeau and Derzy Blondeau being duly sworn, depose and say that Simon Roi came to the village of Peoria, some time during the year 1793, and settled at that place, and soon afterwards made an improvement on a lot, and resided on the same for two years, when he abandoned the same. Said lot was situated and bounded southwardly by a street, northwardly by a street, eastwardly by a lot owned by John Coursolle, westwardly by Louis Bisson. Said lot contained one half of an arpent of land. That the said Roi married the widow of Charles Le Doux, and lived with her on the lot formerly owned by said Charles Le Doux; which lot was bounded southwardly by a street separating it from the river Illinois, eastwardly by Francis Dupree, northwardly by a street, westwardly by Antoine Roi.

Also one other lot, lying immediately in the rear of the last-described lot, and separated from it by a street. Each of which lots contain one half arpent of land.

Also one out lot, containing about six arpents of land, adjoining to and in the rear of the last-mentioned lot of ground. And further, the said Charles Le Doux commenced the improvement of the said last-mentioned lots during the year 1793, and improved them till his death. The house and garden on the front lot, stables and outhouses on the rear lot; and the out lot of six arpents was occupied as a cornfield. That the said Roi married the widow of the said Charles Le Doux, about the year 1799; that the said widow of Le Doux had no child or children, and that the said Roy and his wife occupied said lots in the right of her said husband Le Doux, from the year 1799 till the year 1808 or 1809, and that he believes the said Roy never sold or disposed of the same. And further they say not.

DUZY BLONDEAU,
soinarque ✕.
J. F. HAMTRAMICK,
Act'g Interp'r.
EDWARD COLES.

Sworn and subscribed before me, this fifteenth day of August, 1820.

JOHN Y. SAWYER,
J. P.

Affidavits of Mrs. Glodon and Fortier.

State of Illinois, St. Clair County, ss.

Personally appeared before me, Vital Jarrot, an acting justice of the peace in and for the county of St. Clair, and State aforesaid, Mrs. Madaline Glodon and Angelique Fortier, who are both persons per-

sonally known by me, and who are known by me to be residents of the aforesaid county and State.

And the aforesaid Madaline Glodon and Angelique Fortier make oath before me, that they both formerly lived in the village of Peoria when the said village was occupied by the French, and that they were well acquainted with all of the then inhabitants of the said village of Peoria.

And the said Madaline Glodon makes oath, that she resided with her parents in and about said village of Peoria until and after she was married with her first husband, Antoine La Panier, who was one of the first settlers of said village, with whom she remained at said place until driven therefrom by force; and that her maiden name was Madaline Lavasseur dit Chamberlain, who was also one of the first French settlers of said village of Peoria.

And the aforesaid Angelique Fortier makes oath, that she resided with her parents and friends in and about said village of Peoria until married with her first husband, Louis Pillette; and that her maiden name was Angelique Wallette, who was also one of the first French settlers of said village of Peoria. And they both state that they were intimately acquainted with the most of the French settlers of said village, up to the time that the said place was taken from the French that then inhabited it; and do further state to personally know the following named persons to be in possession and peaceable enjoying of certain property which they held in the village of Peoria, previous to the capture of same, by purchase from other settlers, as well as by possession and settlement, and with whom they have had frequent intercourse ever since that time: they state Raphael Bolange owned and occupied a lot, which was the uppermost lot in said place, who has since died and left only one daughter. Antoine Gran Bois owned and occupied a lot in the village of Peoria, joining the above; since dead, and left several children. Louis Pillette claimed out lots in said place in right of Angelique Wallette, who is now Angelique Fortier, who states that she is the only heir of the aforesaid Frenier Wallette. They both state also that Antoine Roy had and owned some several lots in lower part of said place, and also some out fields on which he raised their vegetables, which was never doubted but what he owned, and which he remained in possession of until the French left the place. Simon Roy also had and owned some several lots in said village, and also some out field, which was also his, which he kept until the French left the place. Pierre Lavasseur dit Chamberlain had and owned certain lots in said place, which has since died and left children, one of whom is Madaline Glodon, who state that she is the daughter of the aforesaid Lavasseur. Anteveen Lapance owned and occupied certain lots and fields in and joining said village, who was also a settler in said village, and who they state was the first husband of Mrs. Madaline Glodon (who has since died and left children); and also that they were formerly ac-

quainted with Michael La Croix, who was a settler at said village of Peoria, and that had and owned a lot in said place, and that he has since died and left two children, one a daughter, Adaline, who is now the wife of Samuel B. Chandler, and a son, Rene M. La Croix; and state that these are the only children of the above Michael La Croix, and that they have known them from their infancy, and that their mother is also dead. And the aforesaid persons state, that they were, when living at Peoria, and ever since been intimately acquainted with the persons and descendants of persons that they have mentioned as owners and settlers of the village of Peoria, as they have all resided in the same section of the country with the said Madaline Glodon and Angelique Fortier, and they therefore state that the aforesaid persons mentioned have not received from the general government any donation, grant of land, or confirmation, to the best of their knowledge and belief.

her
MADALINE ⋈ GLODON.
mark.
her
ANGELIQUE ⋈ FORTIER.
mark.

Sworn to and subscribed before me, this 11th day of August, A.D. 1845.

VITTAL JARROT, [SEAL.]
Justice of the Peace.

State of Illinois, St. Clair County, *ss.*

I, William McClintock, clerk of County Commissioner's Court of said county of St. Clair, do hereby certify that Vital Jarrot, whose name is subscribed to the within instrument of writing, was, at the time of signing the same, namely, the eleventh day of August, A.D. 1855, an acting justice of the peace within and for the said county, regularly commissioned and qualified, and, as such, full faith and credit are, and of right ought to be, given to all his official acts.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in Bellville, the 12th day of August, A.D. 1845.

WM. McCLINTOCK,
Clerk C. C. C. St. C. C.

EDWARDSVILLE, ILL., 1st September, 1820.

Notice is hereby given to the register of the land office at Edwardsville, that I claim a lot in the village of Peoria, bounded northwardly by a lot occupied by Charles La Doux, southwardly by the commons of said village, eastwardly by a street separating it from the Illinois river, and westwardly by a street which separates it from another lot

which I claim in said village, bounded northwardly by a lot occupied by Charles La Doux, southwardly and westwardly by the commons, and eastwardly by the street before mentioned, which separates the two lots, each of which lots contain one-half of an arpent. Which two lots I claim under the act of Congress of 15th May, 1820.

his
ANTOINE ⋈ ROY.
mark.

Attest,
WM. P. MCKEE.

State of Illinois, County of Madison, *ss.*

Simon Roy and Michael Declare, being duly sworn upon the Holy Evangelist, declare and say, that Antoine Roy, of the village of Peoria, some time during the years 1793 or 1794, commenced an improvement on two lots of ground in said village, bounded on the southwestwardly side by the commons, on the westerly end by a street, on the northeasterly side by a lot occupied by Charles La Doux, and on the easterly end by a street dividing it from the river Illinois, on which he built a house, and cultivated a garden. The other lot, situated immediately in the rear of the lot before described, and bounded on the northerly side by the lot of Charles Le Doux, on the westerly part by the commons or unoccupied land, and on the southerly side by said commons, on the easterly side by a street dividing it from the first described lot, which was occupied by stables and houses and a haystack; and each of the said lots contained one-half arpent of ground. That the said Antoine Roy occupied the said lots of ground for the space of five or six years, after which he left the village of Peoria, and the said lots were never sold or disposed of to any person by said Roy, as these deponents verily believe. And further these deponents say not.

his
SIMON ⋈ ROY.
mark.
his
MICHAEL ⋈ DECLARE.
mark.

I certify the above was translated to the deponents, to the best of my abilities.

J. F. HAMTRAMICK.
EDWARD COLES.

Sworn and subscribed before me, this 1st day of September, 1820.
JOHN Y. SAWYER,
Jus. Peace.

State of Illinois, Madison County, *ss.*

LAND OFFICE, EDWARDSVILLE, ILLS.
June 22d, 1849.

I, Matthew Gillespie, register of the land office at Edwardsville, Ills., do hereby certify that the foregoing copies of notices, affidavits, and of the report of the register of the said land office, as before and herein stated, are true and perfect copies of the originals now on file and of record in my office, and the same contain all the evidence and all the account of the proceedings in relation to said claims No. 29 & 33 of village lots in Peoria, to be found in the records and papers on file in my said office.

Given under my hand, the day and year above written.

M. GILLESPIE,
Register.

Powel's Evidence.

15th. He proved by Elihu N. Powell, Esqr., that he had lived in Peoria twenty years. Knew the defendant's landlord, Ballance, and the premises in dispute. The place called Ballance's avenue is further down the Illinois river than the property in controversy in this suit. Said Ballance has been in possession of a part of the southwest quarter of section nine, in township eight north of the base line, and range eight east of the fourth principal meridian, claiming the whole, in his own right, adversely to all others, except as he sold portions of it, ever since witness had been living there.

Value of the Property.

Agreed that the property in dispute was worth more than two thousand dollars, and that the defendant was the tenant of Charles Ballance.

Ballance's Application.

Plaintiff then offered in evidence 1st paper, which is as follows:

27th day of November, 1837.

No. 13,293.

I, Charles Ballance, of Peoria county, and State of Illinois, do hereby apply for the purchase of the southwest fractional qr. of section numbered nine, in township numbered eight north, of range numbered eight east, of the fourth principal meridian, containing one hundred and forty-seven $\frac{43}{100}$ acres, according to the returns of the surveyor-general, for which I have agreed with the register, to give at the rate of one dollar and twenty-five cents per acre, subject however to the rights of any and all persons, claiming under act of Con-

gress, 3d March, 1823, entitled An Act to confirm certain claims to lots in the village of Peoria in the State of Illinois.

C. BALLANCE.

I, Samuel Leech, register of the land office at Quincy, Illinois, do hereby certify, that the frac'l qr. section above described, contains $147\frac{43}{100}$ acres as mentioned, and that the price agreed upon is $1 25 per acre.

Pre- act, 1834.

SAML. LEECH,
Register.

LAND OFFICE, QUINCY, Nov. 9th, 1854.

I, A. C. Marsh, register of the said land office at Quincy, Ill., do hereby certify that the foregoing is a true and correct copy of the original application of Charles Ballance, now on file in this office.

A. C. MARSH,
Register.

To the reading of which, defendant objected, but the court overruled said objection, and the said paper was read to the jury.

2d. He read a patent from the United States to Charles Ballance, which is as follows, and which patent was issued in pursuance of the pre-emption and entry of Ballance, as offered by defendant.

Ballance's Patent.

Certificate No. 13,293.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Charles Ballance, of Peoria County, Illinois, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Quincy, whereby it appears that full payment has been made by the said Charles Ballance, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the southwest fractional quarter of section nine, in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing one hundred and forty-seven acres, and forty-three hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Charles Ballance.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by

a correct plat thereof, surveyed with my consent and under my directions, by George C. McFadden, county surveyor of Peoria county, in the State of Illinois, and that the said streets and alley are hereby vested in the board of aldermen of said city, for the use of the public, provided, however, that I reserve to myself the right to inclose or keep inclosed, until the public interest shall require them to be opened, of which interest I am to be the judge, all said streets, except Adams, Water, Hudson, and Chestnut, and all the alleys, except those below Adams street and above Chestnut street: provided, further, that I reserve to myself, my heirs, and assigns, forever, the exclusive right of establishing bridges, ferriages, and fishing on said land, this survey, notwithstanding.

In witness whereof I have hereunto set my hand and seal, this 10th April, 1846.

C. BALLANCE. [SEAL.]

State of Illinois, County of Peoria, *sct.*

Personally appeared before me, Jonathan K. Cooper, a justice of the peace of said county, Charles Ballance, whose name is subscribed to the above acknowledgment as having executed the same, and who is personally known to me to be the same, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed. Dated this 10th day of April, 1846.

JONATHAN K. COOPER,
Justice of the Peace.

State of Illinois, County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder in and for said county, do hereby certify the within plat is duly recorded in said office, in Book Q., pages 305 and 306, this 24th day of April, A.D. 1846.

CHARLES KETTELLE,
R. P. Co.

The above was all the evidence in the cause. Whereupon, the defendant asked the court to instruct the jury as follows:

Defendant's Instructions.

"A."—Instructions asked by Defendant's Counsel.

United States Court, July Term, A.D. 1856.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Defendant asks the court to instruct the jury:

1st. That the patent offered in evidence by the plaintiff to the legal representatives of Antoine Roi, was issued without authority of law, and is void.

2d. That if the jury shall believe, from the evidence, that the ground sued for is other and different ground from that occupied by said Antoine Roi, then plaintiff cannot recover in this action.

3d. This grant being, by the words of the statute, to the claimant, without words of descent, the right could not descend to any one after his death.

4th. If the jury shall believe from the evidence, that defendant's landlord, Ballance, had been in possession of the S. W. quarter of section nine, in township eight north, of range 8 east, of the 4th principal meridian, by cultivating a part and claiming the whole, under his papers, as exhibited to the court and jury, for more than twenty years before the commencement of this suit, then the plaintiff cannot recover in this action.

5th. If the jury shall believe from the evidence, that said Ballance, by his tenants, said Cole, Thompson, and Gregg, had been in possession of said premises, by actual occupancy, for more than seven years before this suit was commenced, then plaintiff is not entitled to recover in this action.

6th. If the jury shall believe from the evidence, that said Ballance, by his said tenants, had been in possession of said premises for more than seven years before the commencement of this suit, and had, during said period, paid all taxes that had been assessed against said premises, then plaintiff cannot recover in this action.

7th. That in actions of ejectment, it is a principle of law that plaintiff must recover on the strength of his own title, and cannot rely on the weakness of defendant's title; and therefore if plaintiff's proof is so uncertain and defective as to leave doubts in the mind of the jury as to plaintiff's derivative title by heirship, the defendant is entitled to the benefit of those doubts.

8th. That unless the jury shall believe from the evidence that Mary Gendron is the daughter of Antoine Roi, plaintiff cannot recover.

9th. That unless the jury shall further believe from the evidence that said Mary Gendron is the only survivor of all the heirs of Antoine Roi, the plaintiff cannot recover.

10th. If, on any of these points, the evidence has left reasonable doubts on the minds of the jury, the plaintiff is not entitled to a verdict.

11th. That plaintiff, having by his own witness, Mrs. Gendron, brought to light the fact that Antoine Roi had another daughter, not before known, who had been married to one Papin, it was incumbent on plaintiff to investigate that family, and ascertain positively whether said Papin and wife were dead, and how many children they had had, if any; and whether they were dead; and when they died; and which died first; and the fact that no such proof has been obtained or attempted, is a circumstance from the jury have a right to presume there are other heirs besides said Mary Gendron.

12th. That the clause interlined in the patent, introduced in evidence by plaintiff, from the United States to said Ballance, commencing "subject to the claims," &c., being an attempt by the habendum to lessen the estate conveyed in the granting part of the deed, is absolutely void.

13th. The officers of the government having sold said southwest quarter of section nine to said Ballance, absolutely and without reservation, had no right to insert said clause in said patent.

14th. That said Ballance was not bound to accept said patent with said clause in it.

15th. The fact that said Ballance still has the duplicate receipt of the receiver at the land office at Quincy, and the patent is introduced by the plaintiff, is evidence from which the jury may presume that he never did accept it in that form.

16th. That there being no surveys locating said French claims No. 33, until after the purchase made by said Ballance, on the 27th of November, 1837, the register and receiver at Quincy had no means of knowing, and were not bound to know that said claim number 33 would be located thereon, and therefore had a right to sell, and did sell said land to said Ballance, discharged from any claim said Antoine Roi or his legal representatives may have had on it.

17th. That were said clause binding on said Ballance and those holding under him, it would only be operative between the United States and said Ballance, and those holding under; but as between plaintiff and defendant in this suit, it would have no effect. It is only a stipulation by the government with the patentee, that *that* in case any of the ground should be recovered by a certain class of claimants, the government would not be responsible.

18th. That if the jury shall believe from the evidence, that said Mary Gendron was as likely to have been begotten by Louis Roi, or some other man, as by said Antoine Roi, the plaintiff ought not to recover in this action.

Which instructions the court refused to give, but instructed the jury as follows:

The court declined giving the instructions to the jury in the form requested by the defendant's counsel, but instructed them as follows:

"*B.*" *Instructions of the Court.*

TESSON
v.
GREGG.

1st. That the acts of 1820 and 1823, taken in connection with the report of the register of the land office at Edwardsville, the survey of the surveyor-general and the patent, vested the legal title to the lot in the legal representatives of Antoine Roi. That until the lot was surveyed, and the survey approved, as required by the act of 1823, the claimants could not know the extent and boundaries of the

lot, and until that time, there could be no adverse possession under the statutes of limitations.

2d. That in regard to the legitimacy of Mary Gendron, if she was the daughter of Antoine Roi, born before his marriage with her mother, and after her birth, her father and mother were married in Missouri at the time mentioned, such marriage of her father and mother in Missouri rendered the child legitimate; and she being legitimate by the law of Missouri, was capable of inheriting lands in Illinois, and it gave to her the right of heirship to property in Illinois; and if her father had not divested her of her right, by deed, devise, or otherwise, she could take an estate in Illinois as the heir of her father, and so as to that was his legal representative.

3d. That the jury must be satisfied from the evidence, that Mary Gendron, through whom the plaintiff claims, was the sole surviving heir of Antoine Roi, the court explaining to the jury the rule of descents—this was a question of fact to be found by them. That if they should find there were other children of Antoine Roi at the time of his death, then, if they should also believe that such children, or the descendants of such children, had been absent from their places of residence, and nothing had been heard of them by their friends and acquaintances for seven years or more, then they might presume they were dead.

4th. That the jury must find from the evidence, that the title by mesne conveyances has become vested in the plaintiff, in order to authorize a verdict in his favor.

5th. That if Antoine Roi acknowledged Mary Gendron as his child before, at, and after his marriage with her mother, and presented her as such to receive baptism, they were strong circumstances tending to prove her to be his child.

6th. The plaintiff must recover on the strength of his own title.

7th. Ballance, the landlord of the defendant, was not bound to enter the land or accept the patent, but he applied for the land and took his title, subject to these French claims, and the only title shown is one which is subject to the claims under the act of 1823, and under the circumstances detailed in evidence, the court is of opinion that Ballance's title never included, and the government never intended that it should include the lot in controversy, if there was any one capable of taking it under the act of 1823.

And it appears by his application that he had full notice of these French claims. In these circumstances, a possession of a part of the quarter could not be said, in point of law, to be a possession of the whole quarter. But Ballance was bound by his title.

8th. If Ballance had possession of this lot under a title adverse or in hostility to the French claims, for seven successive years, and had paid taxes for that time, then his possession might be protected under the statutes of limitations.

To all of which decisions, rulings, and instructions, the defendant

then and excepted, and prayed that this his bill of exceptions be sealed, signed, and made of record, which is done.

It was further admitted at the trial, that the answer of Mrs. Gendron to the 12th cross-interrogatory, which was not propounded, should be considered as if answered in the affirmative.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Indorsed: Filed August 6th, 1856. Wm. H. Bradley, clerk.

And on the 29th day of July, A.D. 1856, said defendant, by his attorney, filed with the clerk of said court his appeal bond, in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States for the Northern District of Illinois. Of the July Term, A.D. 1856.

EDWARD P. TESSON
v.
RICHARD GREGG. } In Error.

Know all men by these presents, that we, Charles Ballance and Isaac Underhill, are held and firmly bound unto Edward P. Tesson, the above plaintiff, in the sum of two thousand dollars, to be paid to the said plaintiff, his executors or administrators. To the payment whereof, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 25th day of July, A.D. 1856.

Whereas, the above-named Charles Ballance hath prosecuted a writ of error to the Supreme Court of the United States (but in the name of said Richard Gregg), to reverse the judgment rendered in the above-entitled cause, by the above-named court, at its present session. Now, therefore, the condition of this obligation is such, that if the above-named Charles Ballance shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, but otherwise it shall remain in full force and virtue.

C. BALLANCE. [SEAL.]
ISAAC UNDERHILL. [SEAL.]
By his attorney in fact,
C. BALLANCE.

Sealed, signed, and delivered, in presence of—two inserted instead of "one," before signing.

Attest, WM. H. BRADLEY.

Security approved.

THOMAS DRUMMOND.

Indorsed: Filed July 29th, 1856. Wm. H. Bradley, clerk.

And on the same day, to wit, the 29th day of July, A.D. 1856, said defendant, by his said attorney, filed with said clerk his writ of error in the words and figures following, to wit:

Writ of Error.

United States of America, Northern District of Illinois, *ss.*

The United States of America to the judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Edward P. Tesson against Richard Gregg, a manifest error hath happened, to the great damage of the said Richard Gregg, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th day of July, A.D. 1856, and of our independence the 81st year.

[SEAL.]

WM. H. BRADLEY,
Clerk.

Indorsed: Filed July 29th, 1856. Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the foregoing transcript to be a full and perfect copy from the record of all the proceedings which have been had in said court in said cause of Edward P. Tesson against Richard Gregg, as the same now appears in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at my office, in Chicago, in said [SEAL.] Northern District, this twenty-fifth day of October, A.D. 1856.

WM. H. BRADLEY,
Clerk.

Said Richard Gregg, by his attorney, C. Ballance, comes, when, &c., and says, that in the record and proceedings aforesaid, there is manifest error in this, to wit:

1st. Said Circuit erred in permitting a portion of said printed to be read to the jury.

2d. Said court erred in permitting said plats to be given in evidence to the jury.

3d. Said court erred in permitting said patent to Antoine Roi to be read in evidence to the jury.

4th. Said court erred in refusing instructions asked by the defendant below to be given to the jury.

5th. The court erred in instructing the jury as above stated.

6th. Said judgment ought to have been given for said defendant Gregg, and not for said plaintiff Tesson.

For which errors, and others apparent in said record, said defendant Gregg prays that said judgment may be disannulled, set aside, and for nothing held.

C. BALLANCE,
For Appellant.

The United States of America, Northern District of Illinois, *ss.*

In the Circuit Court of the United States for the Northern District of Illinois.

EDWARD P. TESSON
v.
RICHARD GREGG. } Ejectment.

Be it remembered, that on the eighteenth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, the following writ of error was sued out and filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and reads as follows, to wit:

United States of America, Northern District of Illinois, *ss.*

The United States of America to the judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of

a judgment in a plea which is in the said court before you, between Edward P. Tesson and against Richard Gregg, a manifest error hath happened, to the great damage of the said Richard Gregg, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of July, [L. S.] in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the 84th year.

WM. H. BRADLEY,
Clerk.

Indorsed: Filed July 18, 1859, Wm. H. Bradley, clerk.

And also on the same day, to wit, the 18th day of July, 1859, the following bond was filed in the Clerk's office of the Circuit Court of the United States for the Northern District of Illinois, to wit:

United States of America, in the Circuit Court of the Northern District of Illinois, of the July Term, 1859.

RICHARD GREGG
v.
EDWARD P. TESSON. } In Error.

Know all men by these presents, that we, Charles Ballance and Samuel Voris, are held and firmly bound unto the above-named Edward P. Tesson, in the sum of two hundred dollars, to be paid to the said Edward P. Tesson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents, sealed with our seals, and dated this 11th day of July, 1859.

Whereas the above-named Richard Gregg has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause made in favor of said Tesson by the said Circuit Court.

Now, therefore, the condition of this obligation is such, that if the

above-named Richard Gregg shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. BALLANCE. [SEAL.]
SAML. VORIS. [SEAL.]
By C. BALLANCE, [SEAL.]
His Attorney in fact.

Signed, sealed, and delivered
in presence of

Indorsed: Approved, Thomas Drummond. Filed, July 18, 1859. Wm. H. Bradley, clerk.

And afterwards, to wit, on the 24th day of October, A. D. 1859, the following citation, and proof of service thereof indorsed thereon, was filed in the office of the *of the* Circuit Court of the United States for the Northern District of Illinois, and reads as follows, to wit:

United States of America, *ss.*

To Edward P. Tesson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Richard Gregg is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the Justices of said Court, this 20th day of August, 1859.

THOMAS DRUMMOND.

State of Illinois, City and County of Peoria, *ss.*

I, Owen Donlevy, a notary public in and for said city, being duly qualified and acting as such, do hereby certify, that on the 22d day of October, A. D. 1859, at my office in said Peoria, personally appeared Lysander R. Webb, who is personally known to me to be a credible witness, and testified under oath that he did on this day serve the above citation on Norman H. Purple, by giving to him a true copy thereof.

Witness my hand and seal notarial, this 22d day of October, [L.S.] 1859.

OWEN DONLEVY,
N. P.

Indorsed: Filed Oct. 24th, 1859, Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify that the above and foregoing is a full, true, and complete transcript of the writ of error, bond, and citation, and proof of service indorsed thereon, filed in the cause wherein Edward P. Tesson was plaintiff, and Richard Gregg defendant, as the same appear of record, from the originals thereof now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in the city of Chicago, [SEAL.] this eighth day of November, eighteen hundred and fifty-nine, and of our independence the eighty-fourth year.

WM. H. BRADLEY,
Clerk.

1899

No. 297—DECEMBER TERM. A. D. 1859.

UNITED STATES.

SUPREME COURT

RICHARD GREGG vs. EDWARD P. TESSON.

IN ERROR TO THE

NORTHERN DISTRICT OF ILLINOIS.

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PEORIA, ILL.

IN THE UNITED STATES SUPREME COURT.

No. 297.—DECEMBER TERM, 1859.

Richard Gregg vs. Edward P. Tesson.

IN ERROR TO THE NORTHERN DISTRICT OF ILLINOIS.

This was an action of ejectment brought in the United States Circuit court, for the Northern District of Illinois, for an undivided half of French Claim No. 33.

A motion was made, on affidavit, showing cause for continuance of the suit, at the July term, A.D. 1856, but the motion was overruled. The affidavit upon which the motion was made, is not in the record.

The judgement is for the land and the costs, but the amount is left blank.

The plaintiff's case, as set forth in the bill of exceptions, is, 1st. The act of 1820. 2d. The act of 1823. 3d. Cole's report. 4th. Brown's survey, represented by the two plats—patent to the legal representatives of Antoine Roi. To the reading of said report defendant objected because there is no law known, making such a book evidence, in a court of justice. To the plats objection was made, because they were not certified from the proper office. The patent was objected to, but read. It was

objected to because it had been decided that the title was perfect without it. The recitals in the patent show that it was in consideration of a certificate of the officers at Edwardsville, but do not show the date of said certificate.

A great mass of contradictory evidence is contained in the record to prove on the part of the plaintiff below, and to disprove on the part of the defendant below, that Mary Gendron was the only heir at law of Antoine Roi. The evidence establishes the fact that he was married twice, and had children by both wives, all of whom are dead, except a grand son named Louis Latour. About him, the proof is not conclusive, but the weight of evidence I think is that he is alive ; the jury, however, it seems, found otherwise. With regard to Mary Gendron, it is established that she was born out of wedlock, and was supposed to be the daughter of one Louis Roi, but Antoine Roi married the mother, and raised Mary as his own daughter, and had her baptised in the name of Mary Roi. She was born in Missouri, in 1814, as it would seem from her own deposition. The land in controversy lay in the then Illinois Territory, now State of Illinois. There was some evidence conducing to show that there was still another heir, but who had not been heard from for some years.

The defendant below, also introduced the original claim, and affidavits in support of it, filed in the land office at Edwardsville, whereby it appears that Antoine Roi was not one of those whose claims were provided for by law. He had left before the village was burnt, and had therefore received no damage. See printed Record, page 69.

Also the affidavit filed at Edwardsville upon which the patent certificate was issued, without which the patent could not have issued. It was sworn to by two ignorant old women, who could not write their own names, and who manifestly knew nothing of the question about which alone there affidavit was needed, to wit: whether Antoine Roi had previously received any confirmation of claims, or donation of any tract of land, or village lot from the United States.

This affidavit is a most extraordinary document, to be the foundation of so many important land titles. At the time these

claims were proved up, they were worth nothing, and no one scrutinized them, but after we, by building on the land, had made it valuable, speculators examined them and found they were all defective in this, that it had not been shown that they had not received, from the government, confirmations, &c., elsewhere. Some of the claimants had received them, but to ascertain which with so much certainty as to be able to swear to it, required both skill and labor. Insomuch that to get a prudent man to do it, in each case, was next to impossible. This trick was therefore devised, to get these ignorant old women to swear in this way. After enumerating as many cases as the writer of the affidavit was interested in, including the one in controversy, the affidavit closes thus: "The aforesaid persons mentioned have not received from the general government, any donations, grant of land, or confirmation, to the best of their knowledge andbelief." And this remarkable document was not filed at Quincy, where it ought to have been, but at Edwardsville, entirely out of the land district, Upon this affidavit the certificate issued, which is the foundation of this patent.

And from this it also appears, that this document was filed many years after the time appointed for filing said evidence. Also from it, it appears to have been filed long after the time when by the establishment of the Quincy land office, the office at Edwardsville had ceased to have jurisdiction over the subject. Matthews *vs.* Zanes Lessee, 4th Cond. Rep. 269.

By Elihu N. Powell he proved that he had been in possession twenty years, and by locating Ballance's avenue he showed in connexion with Brailey's evidence, that the real location of Roi's lot was on other ground than that sued for, to wit; that it was originally below Ballance's avenue, whereas, the ground sued for is above.

Plaintiff below, then offered a paper which purported to be an application to enter the land in dispute, subject to the French claims.

Plaintiff then introduced in evidence, a patent to Ballance, in the usual form, except that it contains the clause in the habendum "Subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled." &c.

Kettelle proved that there was no taxes due and unpaid on the ground, by the description given of lots in Ballance's survey, and that it was assessed to said Ballance, for 1843, and that no taxes have ever been assessed on the property, under the description of "French claims, or by their boundaries, nor in any other manner, except as being included in the quarter section, and afterwards in lots in Ballance's Addition."

Braileys deposition identifies a map, which is in the record, as being a correct representation of the property in dispute.

S. Dimon swears that he assessed the S. E. & S. W. quarters of section 9 in 1843, to C. Ballance, at his request.

A certified copy of Ballance's Addition shows the grant in dispute to be above Ballance's avenue.

The court refused to instruct the jury. 1st. That the Roi patent was issued without authority of law, and was therefore void. 2d. If the jury believe that the ground granted in the patent, is different from that occupied by Roi, plaintiff cannot recover. 3d. That the grant in the law being without words of descent, the right could not descend to any one. 4th. That seven years autual possession, will protect defendant. 5th. That seven years possession and payment of taxes would protect defendant. 6th. If plaintiff's proof leaves doubt as to the heirship of the one under whom he claims, he cannot recover. 7th. Unless the jury believe from the evidence that Mary Gendron is the daughter of Antoine Roi, plaintiff cannot recover. 8th. That unless the jury believe from the evidence that she is the only survivor of all his heirs, plaintiff cannot recover. 9th. If the jury have reasonable doubts on any of these points, plaintiff cannot recover. 10th. That plaintiff having shown another heir to have existed, it was incumbent on him to investigate the matter, and account for her, and having failed to do it, is a circumstance from which the jury have a right to infer there are others. 11th. The reserving clause in the habendum is void. 12th. The government having sold without reserve, had no right to insert said clause. 13th. That said Ballance was not bound to accept said patent, with said clause in it. 14th. The fact that Ballance still has the certificate, and the patent is introduced by the other

party, is evidence from which the jury may presume, he never did accept it in that form. 15th. There being no evidence at the land office of the location of claim No. 33, the Register and Receiver had a right to sell, and did sell said land, discharged from said Roi's claim. 16th. At most, said clause is only binding between the United States and said Ballance, but is without effect as between Roi, or those holding under him, and Ballance. At most, it is a stipulation between the government and the patentee concerning a particular class of cases, that if the ground shall be recovered by any one of them, from the patentee, the government will not be responsible. 17th. If the jury believe Mrs. Gendron was as likely to be the daughter of Louis Roi, or some other individual, as Antoine Roi, plaintiff cannot recover.

But the court instructed the jury, 1st. That the two acts, the report, survey and patent vested the legal title in the legal representatives of Roi. That until the survey they could not know their boundaries, and until then there could be no adverse possession.

2d. That if Mary Gendron was the daughter of A. Roi, who after her birth married her mother, such marriage made her legitimate in Missouri, and being legitimated in Missouri, she was capable of inheriting land in Illinois, the laws of which state did not legitimate her.

3d, The jury must be satisfied that Mary Gendron was the sole surviving heir of Antoine Roi. If they should find that there were other children, but that they had been absent from their places of residence, and nothing heard from them for more than seven years, they might presume they were dead.

4th. The title must have become vested in plaintiff, by mesne conveyances.

5th. The acknowledgment of Roi that Mrs. Gendron was his daughter, and his having had her baptised, were strong circumstances tending to prove her to be his child.

6th. Plaintiff must recover on the strength of his own title.

7th. Ballance was not bound to enter the land or accept the patent, but he applied to enter it, and did enter it, subject to the French claims. Ballance's title never included, and government never intended it to include, the lot in question. Ballance had notice of this claim, and could not therefore by having possession of a part, claim to be in possession of the whole.

8th. If Ballance had title adverse and in hostility to the French claims, for seven sucessive years, and paid taxes for that time, then his possession may be protected under the statute of limitations.

Errors assigned.

1st. That the court erred in permitting plaintiff to read from American State Papers.

2d. In permitting said plats to be given in evidence, certified by the Surveyor General, instead the Secretary of the Treasury, or Commissioner of the general land office.

3d. In permitting the Roi patent to be read to the jury.

4th. In refusing defendant's instructions.

5th. In the instructions actually given.

6th. Judgment ought to have been for defendant.

I submit the propriety of the introduction of the plats, and Cole's report on what has been said in previous cases.

The patent ought not to have been given in evidence, because, 1st. The title vested, as this court said in the case of Bryan & Rouse *vs.* Forsyth, 19 How., on the approval of the plats, and consequently the issuing of a patent was a void act. The government could grant nothing after having parted with the whole title. If the government could then, by a patent, change the rights of the parties, or fix a new date from which the statute of limitations should commence running, after the plaintiff was barred, counting from the date of the survey, they can do the same thing by granting another patent now, or a hundred years hence.

2d. Antoine Roi was not entitled to this ground. He, by his own showing, was not one of the persons to benefit whom the law was passed. He was not one of the sufferers at Peoria. He had left years before. He had no ground at Peoria. He lived there awhile without title, and according to the custom of the place, as shown in Cole's report, when he left, his claim ceased, and the first comer had a right to take it.

3d. The grant in the act of 1823, is "to each of the French and Canadian inhabitants, and other settlers in the village of Peoria." Not a word about heirs or legal representatives, but the grant in the patent is "to the legal representatives of the said Antoine Roi, and to their heirs and assigns forever." It is submitted that the ministerial officer who filled up this patent, had no legal authority to do it in this way.

4th. The effect of the recitals in the patent are done away with by the production of the affidavit, upon which it issued.

5th. Whatever the surveyor may have done, or whatever the patent may say, Roi was entitled to no other ground than "the lot so settled upon and improved." These are the words of the law, and there is no getting around them; but by the proof the land sued for, although the same Brown surveyed for him, is not the lot he "settled upon and improved." Menard *vs.* Massey. 8 How. 308—313.

6th. This being one of the lots that was located in and by the report, no survey was necessary, and consequently the title vested on the 3d of March, 1823, and the fourth instruction asked by defendant below, that the statute of twenty years was a bar, ought to have been given.

7th. By the law, as laid down in the case of Bryan & Rouse *vs.* Forsyth, to refuse the fifth instruction asked for by defendant below, to wit: that the statute of limitation of 1835 was a bar, was an error for which this case must be reversed, whatever the court may think of any other point in the case.

8th. It is equally clear that the 6th instruction, with regard to the act of 1839, being a bar ought to have been given. About the possession there is no question. It had existed for more than twenty years, and the payment of taxes is proved by plain-

tiff's own witness, Kettelle. Wright *vs.* Matteson, 18 How. 50, and cases there cited.

But the great question, in the case, and that on which I confidently rely for reversing this judgment is presented by the second instruction given by the court, which is in substance, that in the descent of real estate the law of the domicil, and not that the place where the land lies shall govern. This, with due deference to the Honorable Judges who so decided, is, in my opinion, not law anywhere: at any rate, I assert it is not law in any case where the common law prevails. But this doctrine has been conclusively settled by the highest authority, in the case of Birthwhistle *vs.* Vardell, 5 Barn. & Cress., 438. 9 Bligh from 32 to 88. and 7 Clark and Finn 895. Story's Conflict 138, sec. 93 &c.

If this be law, then may a man leave his family and go to Salt Lake, and start a "spiritual" progeny there, who will some day return and dispossess the lawful heirs of his estate.

The seventh instruction given by the court is in positive opposition to the decision in the case of Bryan & Rouse *vs.* Forsyth, 19 How. 334. The court here say my title did not include the ground in dispute, although it is a part of the same quarter section, but in that case this court say that a similar patent did include a similar French lot.

Also in this instruction, it is said, in substance, that because Ballance had notice of the existence of these claims, that therefore a possession of a part, in the name of the whole, was not, in law, the possession of the whole. Need I remind this court that the whole object of the statute of limitations is to aid the possession taken under a bad title. A good title needs no statute of limitations to bolster it up. The possession of a junior patentee, where he has an inch of actual possession, goes to the extent of his patent boundaries, however many senior patents he may have known of that interfered, unless there were a possession under the senior patent. Jackson *vs.* Newton, 18 John. 360. Ewing *vs.* Burnett, 11 Pet. 41. Wright *vs.* Matteson, 18 How. 59. Clark *vs.* Courtney, 5 Pet. 353.

CHARLES BALLANCE,
For Plaintiff.

is older than my opponent's survey, but there was no official notice when I bought the land, either in the land office at Quincy, or the surveyor general's office at St. Louis, of the location or existence of this claim on this tract of land. And in the case of Meehan et al. vs. Forsyth, decided at the last term of this court, this patent is treated as a perfect title, in fee, as it no doubt is. Your honors say: "This saving clause was designed to exonerate the United States from any claim of the patentee, in the event of his ouster, by person's claiming under the acts referred to." "The patent does not impose upon him any duty to recognise these claims; it only requires him to accept the title of the United States, with knowledge that such claims exist." A quit-claim deed divests the grantor of all title to the property granted, as fully as the most extensive warranty deed could do. The only difference is, after the grantor has executed the former, he is done with land, and free from responsibility if the title fail; but, after executing the latter, he is also done with the land; but, if the title fail, he is responsible, according to his warranty. Here, if contrary to the report of the register, Roi had a perfect title; or if the act of 1823 could be construed into a perfect grant, without a survey, the United States had no title to the land, and I took none by my patent. If, on the other hand, Roi had no title, but was a mere squatter, as the proof is, and took no title until the survey was perfected, (as my opponents, to avoid the running of the twenty years' limitation contend,) then the title passed to me, and he took nothing.

But Brown had no right to survey that land. In 1840 it was *my land*, and the surveyor had no authority to survey *my land*. None of this quarter was liable to be surveyed, for any Government purpose, after it was patented to me. At all events, the surveyor had no right, at the suggestion of Roi, or his own caprice, to survey for him land that had been patented to me, and which he had *never occupied nor claimed*. It is admitted, that, while the land in the vicinity all belonged to the Government, Roi and the Government, by its officers, might have changed the location of the claim, and both parties would be bound by the survey as thus made. But upon what principle could they locate this claim on my land, which I had paid for, and which Roi had never occupied nor claimed?

According to the case of Hall vs. Papin, decided at the last term of this court, no survey, to satisfy these claims, could be made of land to which the Government had parted with its title, and that no claim could be considered confirmed until a valid survey had been made.

To sustain the 6th position on my brief, page 9, I refer to the following authorities: Inerarity vs. Mimms, 2 Ala., 68, and ante; Mimm's Heirs vs. Higgins, ib., 677; Hallet and Walker vs. Forest, 8 Ala., 264; Eslava vs. Farmer's Heirs, 7 Ala., 559; 6 Peters, 738; Jackson vs. Catlin, 2 John., 263; Sands vs. Perkins, 12 Mo., 256.

In support of my 7th position, I refer, also, to the case of Williams vs. Ballance, lately decided by the supreme court of Illinois, and Meehan et al. vs. Forsyth, and Gregg et al. vs. Forsyth, lately decided by this court.

And for the nature of my possession, see Moffatt's deposition, on page 51 of printed record; Cole's deposition, on page 52; and Judge Powell's evidence, on page 75. Judge Powell says: "Said Ballance had been in possession of a part," "claiming the whole in his own right, adversely to all others, except as he sold portions of it, ever since witness had been living there," to wit, twenty years.

This was notice to all the world. Certainly, to claim the whole adversely for twenty years was notice that the last period of seven years was adversely held. But even actual possession was not necessary, under the laws of Illinois, to authorize an action of ejectment. Any claim of right, or any exercise of acts, indicating a claim of ownership, was sufficient.

I wish, above all other points in this case, to press upon the attention of the court this view of the case. The plaintiff below claimed under title, from a married man and his wife, of land that he claims to have descended to the wife, at a time when neither the husband nor wife, nor both jointly, could have sued for it. He had been married more than seven years, and there had been an adverse holding more than seven years. When he married his wife, he obtained a life estate in her land, at least for her life, if not for his, and was entitled to the possession, rents, issues, and profits, and might have maintained ejectment to get into possession, (2 Kent. Com., 130–1,) and, not having done so, he is completely barred, and she only being entitled to the reversion, cannot sue with him, nor alone. Then, having nothing in the land, how could he convey anything? (1 Cruise Dig., 103–5; 3 Thomas Coke, 305; 1 Bac. Abridg., 695.) The husband or his grantee has the right of possession—the usufruct. The wife is a mere reversioner; and if the deed she signed with her husband, under which Tesson claims, conveyed anything, it was the reversion—the right to sue after the husband's death, or if they have no children after her death.

This particular estate springs out of the marriage relation, but has the same effect and is attended with the same consequences to the inheritance as if it had been executed by express contract between the parties without marriage. If, instead of marrying, the woman had executed to the man a lease of the land for their joint lives, he would have thereby acquired precisely the same interest, neither more nor less than accrued to him by marriage. Suppose such a lease to have been executed, and adverse possession to have been taken of the land, could either the feme or her grantee maintain ejectment during the continuance of the life-estate first granted? Assuredly not, for the plainest reason. Neither she nor the sub-

sequent grantee would be entitled to the possession. The holder of the lease for life would be barred by an adverse possession, if he failed to assert his right in time; but she would not, because her right would be in abeyance during the existence of the life-estate; but she or her vendee might assert her right afterwards. Jackson vs. Scoonmaker, 4 John., 402; Jackson vs. Selick, 8 John., 269; Jackson vs. Johnson, 5 Cow., 95.

The statute would run against tenant by the courtesy, or one having the particular estate, however created, if he was laboring under no disability. Should the owner of the particular estate acquiesce in an adverse possession until the statutory period had elapsed, he, and all claiming under him, would be barred from a recovery; but the rights of the reversioner would not thereby be affected. He could not recover during the existence of the particticular estate, but might afterwards.

Gendron, the husband, having the power to sue, but failing to do so for more than seven years, was barred; and being barred, and Tesson, having no other title to sue on now but that obtained from him, is barred also, at least during his life.

In addition to the above authorities, I would particularly refer the court to Crow vs. Kightlinger, 25 Penn. Rep., (1 Casey, 343,) and Thompson's Lessee vs. Green, 4 Ohio, (new series,) page 216; Ford's Lessee vs. Sangel, 464; also, Sharp vs. Head, 11 B. Mon., 277.

C. BALLANCE,
For R. Gregg.

Supreme Court of the United States.

RICHARD GRIGG, PLAINTIFF IN ERROR,

VS.

EDWARD P. TESSON, DEFENDANT IN ERROR

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Argument of N. H. PURPLE, Counsel for Defendant in Error.

Supreme Court of the United States.

RICHARD GRIGG, PLAINTIFF IN ERROR,

VS.

EDWARD P. TESSON, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Argument of N. H. PURPLE, Counsel for Defendant in Error.

The Plaintiff, in the Circuit Court, gave, in evidence in this cause, everything necessary to constitute a *prima facie* title :

The Act of Congress of May 15th, 1820: 1 Vol. Pub. Land Laws, 333.

The confirmatory Act of May 3rd, 1823: 1 Vol. Pub. Land Laws, 371.

The American State Papers: Vol. 3, pp. 426–7. Showing that Antoine Roi claimed lot 33 in the village of Peoria.

A general plat and survey of the French village of Peoria, and a special plat and survey of the lot in controversy duly certified.

A Patent from the United States to the legal representatives of Antoine Roi, dated 29th June, 1846.

Depositions clearly establishing the fact, that Mary Gendron was the only legal representative of Antoine Roi. *That she had been for more than twenty years a married woman, and still was, at the time of the trial.*

A power of attorney from Touissant Gendron and said Mary Gendron, his wife, to Narcisse Pensoneau, dated March 3rd, 1849, and a deed from them, executed under such power to the plaintiff on the 20th of June, 1849.

The Defendant's evidence shows that Balance, under whom the defendant claims, proved a pre-emption to the fractional quarter section on which the lot was situated, on the 12th April, 1836: that he paid for the land on the 27th November, 1837, and procured a certificate of the entry of the same, and that Balance procured his Patent for the same on the 24th day of January, 1838, containing this saving or exception—"*Subject, however, to the right of any and all persons claiming under the Act of Congress, of March 3rd, 1823, entitled, 'An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.'*"

And this same proviso or exception is contained also in the application made by Balance to enter the land, as is shown by the certificate of the Register of the Land Office given in evidence by the plaintiff, and dated the 27th November, 1837, the day on which he paid for and entered the land.

The evidence further discloses that under his pre-emption claim and entry aforesaid, Balance, and those claiming under him, had been in possession of this lot in controversy, occupying the same for the purpose of a distillery since 1845—but neither he nor any other person was in possession by *actual residence*. The evidence also shows that Mary Gendron under whom the Plaintiff claimed title, was born in the then Territory of Missouri, in the year A. D. 1815, and before the marriage of her father and mother, that they were married two or three months after her birth, that they both recognized and acknowledged her as the daughter of Antoine Roi, who married her mother as before stated, and that she was baptized as his daughter, and known and recognized as such by all her friends and acquaintances.

The defendant in the Circuit Court placed his defence upon five grounds:

First. That of elder and better legal title.

Second. That the evidence disclosed that there were other living heirs of Antoine Roi; or, that the Plaintiff had failed to prove that Mary Gendron was the only heir.

Third. The Statutes of Limitations of the State of Illinois.

Fourth. That Mary Gendron, not being born in lawful wedlock, was illegitimate and incapable of inheriting her father's estate.

Fifth. His tax title.

The second proposition or objection being purely a question of fact to be settled by a Jury, I shall not stop to discuss farther than to state, that there was scarcely any conflict in the testimony, and that the verdict was fully warranted by the evidence.

The first point, to wit, that Balance had the better or superior legal title is settled by the decision of this Court in the case of Bryan and others vs. Forsyth : 19 Howard, 334. It is there decided that when the survey has been made under the grant, which was in September, 1840, the Government and all other parties are concluded by the grant, and location thus established. To the same effect is the decision in the case of Balance vs. Forsyth and others : 13 Howard, 22.

In this case, then, so soon as the survey was made and approved by the proper authorities, the legal title to the premises became vested in the legal representative of Antoine Roi; and the patent having issued to them, the Court will not, as decided in the last preceding case, in the absence of fraud, go behind the patent to inquire into the equities of the respective claimants. This is not a matter of any moment to the Defendant below, because he holds his title subject to the claims and rights of the legal representatives of Antoine Roi.

Third. The Statutes of Limitations.

I am aware that in the case of Bryan & Rouse vs. Forsyth, before cited, this Court has decided that the patent to

Bogardus, subject to these French claims, was such a title as might protect him under the statutes of limitations of this State.

It is not my purpose, now, to controvert that position as applicable to that case, except to state that the Supreme Court of this State—in the case of Edwards vs. Bensel, not reported, but of which a copy of the agreed case, and the judgment of the Court thereon, will be exhibited by my associate, Mr. Williams, to this Court—have put an entirely different construction upon the statutes of limitations of this State.

That case is like this in its main features, except that in this, it is shown that the *application* to purchase the land by Balance was made subject to the rights and claims of those claiming under the Act of 3rd March, 1823. Whereas, in that case, the provision appears for the first time in the Patent; and yet, upon that showing, the Supreme Court affirmed the judgment of the Circuit Court, thereby distinctly deciding that Balance could not protect himself under the statutes of limitations—they being distinctly and clearly set up and insisted upon in the agreed case as a defence in that suit. I am credibly informed, that an opinion in the case had been prepared by the Supreme Court of the State of Illinois and was about to be filed, when the counsel for the respective parties—who were supposed to have been both in the same interest, which was adverse to the opinion of the Court—appeared in Court, agreed to a re-argument of the cause, and then dismissed the suit and withdrew the record by consent.

There are two statutes of limitations in this State, relating to actions to recover real estate. One was passed January 17th, 1835, and the other March 2nd, 1839.

Under the first, a party in possession of land by *actual residence thereon*, having a connected title in law or equity, deducible of record from this State or the United States, or from any officer authorized to sell such land on execution, and whose possession shall have been continued as aforesaid for seven years next preceding the time of the commence-

ment of a suit asserting a right of entry—may set up such title and residence as a bar to any such suit or entry.

In the second, one in actual possession, under claim and color of title made in good faith for seven successive years, and who, during all that time, pays all taxes legally assessed upon the said land, is adjudged to be the legal owner of said land according to the purport and to the extent of his paper title; and such person may set up such title possession and payment of taxes as a bar to any suit brought against him for the recovery of such land.

Real Estate Statutes, Illinois, pages 424-7.

Both these laws contain exceptions in favor of minors, *femes covert*, and others. The first giving seven years, and the last three years from the time such disabilities ceased to exist, to commence suits or institute proceedings for the recovery of the land.

The conveyance by Gendron and wife was made in this case June 20th, 1849. This suit was instituted by their grantee, April 7th, 1854.

Whatever may have been the evidence in the case of Bryan et al. vs. Forsyth, or the condition of the record; the evidence in this case affords no grounds for setting up either of the statutes as a bar to the plaintiff's claim.

It will be remembered that the evidence shows that the land, that is, the fractional quarter section, was laid out into town lots by Balance in 1846.

At this time it had never been enclosed, or occupied, or possessed by *residence* thereon or otherwise, by any person, and until leased to Cole, as testified by him, it was vacant and unoccupied; that he first enclosed it, and that it has been used and occupied for distillery purposes ever since; and not for any purposes of residence. Now the defendant cannot avail himself of the benefit of the Act of 1835 aforesaid, because he has never resided upon the land at all. Much less for "seven years next preceding the commencement of this suit." Neither has said land been possessed by actual residence thereon, by any person, for seven years next preceding the commencement of this suit.

The defendant below is equally unfortunate in attempting to comply with the law of 1849. Although it does appear that Balance and his tenants have been in possession of the premises for more than seven years, yet he wholly fails to prove that he ever paid a tax upon the land or any part thereof in his life. It is not enough that it may appear that the taxes have been paid, it must be shown that the party who claims the benefit of the statute has himself done all that the statute requires, before he can avail himself of its protection.

The second section of the Act of 1839, as well as the first section of the said act, clearly indicate the intention of the Legislature in this respect.

Unless the defendant's counsel changes his position in this Court, he will only pretend to rely upon the Act of 1835.

In the Circuit Court he knew well that it would never do to submit either to a court or jury the question whether Mr. Balance—an astute lawyer, and a gentleman whose eloquent and stirring appeals hold even this august tribunal in wrapt astonishment and admiration—entered into this land under "*claim and color of title made in good faith*;" when his own application to enter the land is *subject* to the rights and claims of the legal representatives of Simon Roi and those claiming under them.

And if he falls back upon the law of 1835, he is again met with the undisputed proof that neither he nor any other person ever occupied the land by actual residence thereon; and also with the still stronger position that Mary Gendron, the representative of Roi, under whom the plaintiff below claims, was in 1849 when she conveyed, and had been for twenty years before, and ever since, a *feme covert*, against whom no statute of limitations could commence to run until she had parted with her title to the land. Considered in this light, it is wholly immaterial, so far as the rights of the defendant below are concerned, whether the instructions given by the court to the jury, upon the general principles of the statute of limitations, were technically right

or not—as long as there was no evidence of actual residence upon the premises—or possession with payment of taxes, without residence; and conclusive evidence that as against the plaintiff below, the statutes could not run to defeat his claim, because his grantee was a *feme covert*. The Court could not be called upon to instruct the jury upon abstract legal propositions, not warranted by the evidence; and if such instructions were asked and refused, the party asking them is in no manner prejudiced thereby.

But I beg leave respectfully to suggest in the case of Bryan and Rouse vs. Forsyth, that it would seem that the case was not fully presented, or was in some respect misapprehended; or that the construction placed upon its own statutes, by the highest judicial tribunal of this State, has ceased to be the rule of decision of this Court.

In support of this proposition, I refer again to the decision in the case of Edwards vs. Bensel, and also to the case of Turney vs. Chamberlain, 15 Illinois Rep., 271. The possession of the defendant below was not "adverse nor hostile in its inception," as the Supreme Court in the case last cited, say it should be, in order to defeat the legal title.

And this, I apprehend, is the general principle, and sustained by numerous authorities, which need not be cited.

How was this entry upon this land made by Balance? Until 1845, he was living upon another quarter section. In 1837 he had applied to purchase the s. w. fractional quarter, subject to the right and claim of the legal representatives of Antoine Roi. He was allowed to do so, and in 1838 he obtained his patent in the land, *subject* to the same right and claim; and in 1845 or 1846, he entered upon the land under his purchase, "*subject*" to the claim of Antoine Roi. How can it be understood that such purchase and entry are *hostile* or *adverse* to the claim, or right to which they were subject?

IV. The fourth point made by the defendant in the Court below, was, that the grantor of the plantiff then was illegitimate and incapable of inheriting real estate in law.

As before stated, she was born in Missouri Territory, in

1815, before the marriage of her father and mother. But they were married about two or three months after her birth, and the child was acknowledged and baptized as theirs.

The civil law was in full force in Missouri Territory at this time. Louisiana, which at the time of its purchase from France in 1803, embraced this district of country, had from its earliest settlement, both under French and Spanish rule, been subject in this respect to the doctrines and principles of the civil law. This condition of things remained unchanged until the State of Missouri had adopted a constitution and was admitted into the Union as a Statei n 1821. And in all the Acts of Congress, passed in the interim for the government of any portion of what was originally the Louisiana Territory, the laws then existing, upon the division and formation of other Territories, were continued in existence until altered or modified.

In 1804, Louisiana was erected into two Districts, with a provision that the laws in force should continue till altered or modified.

2 U. S. Stat. at large, 283-6, sec. 11.

In 1805, March 3rd, an Act was passed by Congress, providing for the government of Louisiana.

2 U. S. Stat. at large, 331-2, sec. 9.

In 1812, June 4, an Act was passed providing for the government of the Territory of Missouri.

2 U. S. Stat. at large, 743-7, sec. 16.

And in all cases the laws in force were continued and extended until altered by subsequent legislation, so that it will be seen that the civil law which legitimated children, born out of wedlock, was in force in Missouri Territory when Mary Gendron was born, and when her parents were married; and consequently she was legitimated by this law and the intermarriage of her parents acknowledging that she was their child.

Cooper's Justinian, p. 192.
Code Napoleon, 92.
Civil Code, Louisiana, 33.

As to her legitimacy and consequent capacity of inheritance in Missouri Territory, where she was born, no doubt exists.

The remaining question upon this branch of the case is, whether being legitimated in one country, she can inherit lands in another.

With the single exception of the decisions in England, made under, or derived from, the canon and ecclesiastical laws of that country, I understand the law and rule to be almost, if not entirely, universal throughout the civilized world, that if, by the law of the country or state where a party is born, he is legitimate or becomes legitimated, he is so everywhere and for all purposes.

Scotland, France, Spain, Portugal, Germany, and most of the continental nations of Europe, hold this to be the law.

Story's Conflict of Laws, pp. 134—168 and Notes. Smith vs. Kelly, 23 Miss.; 1 Cush., 167.

The English Courts, adhering to the straight and narrow principles laid down by the Ecclesiastical Courts of that country, have held that no person can inherit land in England who is born out of lawful wedlock, whether legitimate or not by the law of the country in which such person was born.

They seem to have considered the question of legitimacy, and of the right of inheritance, as disconnected, and the one not necessarily dependent upon the other.

And so in the case in the 5th Barn. & Cres., p. 438, it is decided that one born in Scotland out of lawful wedlock, although legitimate by the intermarriage of the parents in that country, cannot inherit land in England.

Legitimacy may or may not be a blessing. If in the country where one is born he is capable of inheriting, devising and bequeathing real and personal estate, or otherwise transferring the same, and allowing it to pass by operation of law to his children and relatives by blood—and if the moment he plants his foot upon a foreign soil, where the lands and estate and bones of his ancestors lie, his privileges

and rights of property and inheritance cease; and nothing is left him but the naked claim to call himself "*legitimate*" and the son of his father, while the estate must pass to distant relatives, or strangers to his blood. He might as well be born, and live and die, a bastard.

If it shall be contended that the common law of England which has been adopted in the State of Illinois, has any bearing upon this question, the answer is, first, that the question of legitimacy or illegitimacy was determined there not by the common, but by the ecclesiastical law. Second, that the common law of England was not adopted in Illinois until the 4th of February, A. D. 1819, at least four years after the birth of Mary Gendron, under whom the plaintiff below claims title. Third, that it will be seen by an examination of that act, that so much of the common law only which is of "a general nature and not local to that kingdom," is to be the rule of decision in Illinois, and that only, until repealed by legislative authority.

Revised Laws, 1833, p. 425.

Now, if this doctrine had by usage ever become part of the common law of England, nothing is plainer than that it was local to that kingdom, it being manifest from the authorities before cited, that it existed no where else. Moreover, if this ever was a portion of the common law, and as such ever had vitality in the State of Illinois, it was repealed by legislative authority on the 23d January, 1827, by an act entitled "An act to provide for the maintenance of Illegitimate Children"—Revised Laws, 1827, p. 246—which, in the 7th Section, provides—

"If the mother of any bastard child and the reputed father, shall at any time after its birth intermarry, the said child shall in all respects be deemed and held legitimate." And also by the act of February 23, 1829—Revised Statutes, 1845, p. 69—wherein it is declared that "If any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgement, be thereby legitimated, and capable in law to

inherit and transmit inheritance, as if born in wedlock."

The policy and intention of the Legislature of the State of Illinois is further developed by subsequent legislation, as will be seen by reference to Sections 52 and 53 of the Statute of Wills.

Purple's Stat., p. 1201.

And also by the act entitled "An act to amend 'an act concerning the descent of real property in this State,' approved February 12, 1853," in force February 11, 1857.

Laws Illinois, 1857, p. 41.

These laws are all founded in justice and equity.

The rule which inhibits an illegitimate child from inheriting the property of his father, does not tend or in any manner operate to restrain the commission of adultery. It punishes the child, but not the parents. The offspring only is considered criminal, and compelled to suffer disgrace and ignominy, and is deprived of the privileges of a citizen, and becomes an outcast from society, because, without his consent or knowledge, he has the misfortune to be the son of a father who had no *legal* authority to beget him, and of a mother who had not the sanction of a civil contract between her and his father to bear him.

The laws of Illinois before cited, were intended to be retrospective. In the present case, no possible damage or injury can result to any person by giving them such operation. Mary is the only surviving relative or descendant of her father, Antoine Roi—and why, in justice, should she not inherit the property of her father—who begat and acknowledged her, and married her mother a short time after her birth.

The civil law in this respect is a just and righteous law, and as such will commend itself to the consideration of this Court.

V. The defendant claimed the land in the court below under a tax title. Whether any thing will be asserted in this Court on this account, I do not know. Certain I am,

that under the laws and decisions in this State, it has no merits.

I have not the record of this case before me, not yet having been able to procure a copy. I think, however, that I am not mistaken in my recollection, that it arises from a sale made in 1846 for the tax of 1845.

The reasons why it is invalid are,

1st. That Balance had laid out the lands into town lots before it was sold for taxes.

2d. Because the French claim of one-half arpent was included in a gross assessment of 105 acres, which the owner could not pay without paying the taxes upon the whole tract.

3d. Because there is no description of the land in the judgment or precept.

4th. Because the description in the deed is variant from that in the judgment and precept.

5th. Because at the time of the sale, Balance and his tenants were in possession of the land, claiming to own the same, and the said land was listed and assessed to him, said Balance, and he was bound to pay the taxes.

6th. Because said French claim never has been listed or assessed for taxation as a claim, but only as being embraced in the fractional quarter, or the 105 acres aforesaid.

7th. Because it does not appear from any evidence in the cause, that the purchase of nine acres by Balance includes the land in dispute, and in fact it does not.

The first objection is proved by the plat and survey of Balance's addition, which is made part of the record.

As to the second, it seems to me that it is unanswerable. One person is the owner of 105 acres of land, which embraces within its limits one-half acre belonging to another; this half acre is the subject matter of a separate grant made by the United States, surveyed, and its boundaries accurately defined under the authority of the Government, and afterwards a patent issued for the same to the grantee and confirmee.

If Balance owned the residue of the 105 acres, this was no more a portion of his land, and could with no more shade of right or authority be included in, or taxed with, his land, than if it had been located in Iowa or Missouri. Nor can there be a pretence that such owner was bound to pay the taxes on the residue of the 105 acres to save his own from sale. It was the duty of the officer to assess these French claims according to the Government grants, locations and patents; and until this was done, they could not be sold for taxes, so that any legal title could be acquired under such sale.

The sale is void also for the third reason assigned, that there is no description of the land sold in the judgment and precept. Nor is there from the description given, any means afforded of locating the starting point. The description of the land is as follows: "Commencing at a stone on the N. line of sd S. W. quarter section 92, W. of the N. E. corner thereof; thence running S. 48 deg. E. 6 poles," &c., &c.

Now, whether this commencement is from a fixed or a rolling stone, or whether the distance from it to the next place called for in the description is so many feet, inches, chains, poles, or miles, is left wholly to conjecture.

The amended description in the deed does not cure the defect. The uniform decision in Illinois has been, that to make a tax title good, "*prima facie*," there must be a valid judgment, precept, and deed.

Spellman v. Curtenius, 12 Ill., 409.
Balance v. Curtenius, 12 Ill., 416.
Atkins v. Hinman, 2 Gil., 437.
Curry v. Hinman, 11 Ill., 420.
Manly v. Gibson, 14 Ill., 136.

The authorities upon the Fifth point are equally conclusive against the validity of the tax title; one in possession of real estate, claiming to own it—or to whom the same is listed—is bound to pay the taxes himself, and can acquire no better title by permitting it to be sold for taxes, and purchasing it himself.

Chouteau v. Jones, 11 Ill., 322.
Voris v. Thomas, 12 Ill., 442.

The Sixth point is embraced in the Second, and the remarks already made, in relation to the authority of officers (or owners of land) to include one survey, location and grant within the boundaries of another, and sell the whole for the taxes assessed, in such manner, it is presumed are sufficient upon that snbject, and that it would really have needed no argument to convince this Court that there is no law by which the land of one can be sold to pay the taxes due from another.

The Seventh and last objection to this tax title presents a question of fact, to be determined by evidence in the Record; and I have assumed, and still maintain, that if Balance's tax title was in every other respect perfect and indisputable, there is nothing in the Record to prove that the nine acres purchased by him would touch or cover the land in controversy, and in fact it does not, as may be seen from an examination of the plat of his, Balance's, Addition.

In conclusion, I have only to say, that if any technical inaccuracy should be noticed in this argument in relation to dates and times, that I have been obliged to write the same from recollection, not being able to procure a copy of the Record.

N. H. PURPLE.

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No. _____

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1861.

RICHARD GREGG, Plaintiff in Error,

vs. } *Error to Northern District of Illinois,*

EDWARD P. TESSON, Defendant in Error.

ARGUMENT FOR DEFENDANT IN ERROR.

This Argument was prepared by Mr Williams before he went upon the Bench. The case will be submitted by Mr Browning on behalf of Mr Williams

RICHARD GREGG,

vs.

EDWARD P. TESSON.

Error to Northern District of Illinois,

This was an action of ejectment brought in the Circuit Court of the United States for the Northern District of Illinois, on the seventh day of April, 1854, by the Defendant in error against the Plaintiff in error, for the recovery of a village lot in the Town of Peoria, in the County of Peoria, and State of Illinois, which was confirmed by the Act of Congress of March 3, 1823, entitled "An Act to confirm certain claims to lots in the Village of Peoria, in the State of Illinois," to Antoine Roi, and Patented to his legal representatives in pursuance thereof, on the 29th day of June, 1846.

The Defendant in error claimed title to said lot under a deed from Touissant Gendron and Mary Gendron his wife, dated June 20, 1849.

The Plaintiff in error claimed said lot under a Patent dated Jan. 24, 1838, granting the same to Charles Ballance, "subject, however, to the right of any and all persons claiming under the Act of Congress of March 3d, 1823, entitled "An Act to confirm certain claims to lots in the Village of Peoria, in the State of Illinois."

Mary Gendron was the daughter of Antoine Roi. She was born in the Territory of Missouri, in the year 1815. At the time of her birth her father and mother were not married, but they were married in the Territory of Missouri about two or three months after her birth, and they always recognized her as their legitimate daughter.

The father and mother of Mary Gendron were residents of the Territory of Missonri, both at the time of her birth and their marriage. Mary Gendron was married to her present husband, Touissant Gendron, prior to the year 1840, and was the only child of the said Antoine Roi.

The Plaintiff in error on the trial below, made some question whether the said Mary Gendron was the only child or descendant

Mary Gendron being legitimated by the laws of Missouri where she was born, and where her parents lived, and were married, was and is legitimate in Illinois, and being legitimate she inherited her fathers land in Illinois. Consequently, the judgment of the Court below is right and should be affirmed.

ARCHIBALD WILLIAMS,
Atty. for Deft.